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THE ADMINISTRATION
OF
THE OLD REGIME IN CANADA



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Subjects and Authors upon which the candidate submits himself for examination ; the subject selected by him for special proficiency being Constitutional History and Law.

INTERNATIONAL LAW :

Phillimore, International Law. Dicey, The Law of Domicile.

ROMAN LAW .

Ortolan, Institutes of Justinian. Mackenzie, Roman Law.

CONSTITUTIONAL HISTORY AND LAW :

Dicey, The Law of the Constitution.	Gardiner, Constitution of England.
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Hearn, Government of England.	Freeman, Growth of the English Constitution.
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CONSTITUTION OF CANADA :

Todd, Parliamentary Government in the British Colonies. Houston, Constitutional Documents.

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"The words constitution and government have the same meaning, and the government, which is the supreme authority in states, must be in the hands of one, or of a few, or of many. The true forms of government, therefore, are those in which the one or the few, or the many, govern with a view to the common interest: but governments, which rule with a view to the private interest, whether of the one, or of the few, or of the many, are perversions. For citizens, if they are truly citizens, ought to participate in the advantages of a state."

THE POLITICS OF ARISTOTLE, Book III. 7.

THE
ADMINISTRATION OF THE OLD RÉGIME
IN CANADA.

I

European institutions in America—France at the beginning of the 17th Century—L'état c'est moi—The French Canadians as Britons—Administrative Law in England and in France—Edicts and Ordinances of the Old Régime.

The growth of social and political institutions in America must always possess great fascination for the student of human affairs ; for there it is possible to trace the effect of the transplanting of European forms of government and administration, with such modifications as have been adopted of choice or necessity.

Within certain limits, the introduction of the political forms and institutions of Europe into America, illustrates the tendencies that were then dominant in the older continent. It is easy, for instance, to trace in the constitutions of the United States, the conceptions of kingly power and the relations of parliament thereto, that were prevalent during the reign of George the Third, while the absolutism of Louis Quatorze, is nowhere more apparent than in the paternal government that was established in New France.

From this point of view, a special interest surrounds the Province of Quebec, a province which though greatly less in extent than the Canada that fell with Montcalm, includes the territory upon which the features of the Old Régime were most distinctly impressed. In those portions of the continent afterwards called the United States of America, the peculiar genius of Englishmen for self government, was developed without the modifications that result when different races of dissimilar political genius dwell side by side. In the history of New France, however, the student of political affairs meets a state of things altogether unique. He finds a territory and people controlled at great distance from another continent. When the fortunes of war transfer the eminent domain to another European power this people still continue to occupy the land and to enjoy their own language, customs, laws, and religion. The conqueror, however, transplants certain of his own peculiar political ideas ; and the spectacle is thus presented of dual language, race, laws and institutions, existing side by side, and together influencing the course of events.

To pursue an enquiry into the whole subject of the relations between French and English systems of law and social order, would prove too wide for the limits of a thesis of moderate dimensions. One part only of this field shall we attempt to survey--that of Administrative Law in Canada during the time of the French Régime.

“ The physiognomy of a government “ says De Tocqueville “ can best be judged in its colonies ; for there, its characteristic “ traits usually appear larger and more distinct. When I wish

“to discover the spirit and the vices of the government of Louis XIV, I must go to Canada.” It is often instructive, however, to reverse this historical process. The condition of France at the beginning of the seventeenth century, when the colonization of New France was seriously contemplated, presented in respect of its political constitution, the characteristics of feudal subordination unmodified by any strong inclinations towards popular freedom. France, in common with the three other great states of Western Christendom—England, Spain, and Germany—owed the leading principles which mark her constitutional history, to her Teutonic origin. These principles were developed in these countries, in various ways and with different results. In England, the dominant tendency towards popular freedom was never long repressed, but asserted itself among nobles and people alike, with unswerving persistence. The Feudal System, while permitting the king to control his barons, was so related to the people, that barons and people could unite to break the power of tyrannous kings. In France, however, the power of the feudatories was gradually absorbed by the kings. The increase of power was turned to the strengthening of administrative government in the personal interest of the possessor, despot succeeding despot, until the catastrophe of the Revolution was reached.*

It is at the period when the kingly power in France is approaching its zenith, that the beginning of civil administration in New France may be traced. Above all rulers of modern times, Louis XIV was the embodiment of the mon-

*Const. Hist. of England, Stubbs., vol. 1, p. 3.

archical idea. The famous words ascribed to him "*L'état, c'est moi*," were probably never uttered; but they perfectly express his spirit. "It is God's will," he wrote in 1666, "that whoever is born a subject, should not reason but obey."*

Control by France ceased, however, before the red days of the Revolution dawned. Wolfe's victory antedated the death of Marie Antoinette by thirty years. The effect that the Revolution might have had upon Canada, supposing that she had remained a colony of France, and the extent to which it would have relieved the colony from a long tutelage, can only be surmised.

Popular liberty, however, has been attained by the descendants of France in the New World not less securely than by those who now sustain republican institutions in the older land. The rights and privileges of the French Canadian are co-extensive with the rights and privileges of every Briton, and have been attained, not by any vast social upheaval, but through the political wisdom of the race who emerged victorious, in the struggle that was terminated by the capitulation at Montreal. The French colonists of Canada, when they became the subjects of Britain, stepped forth into a liberty scarcely dreamed of previously. The readiness with which they availed themselves of the privileges stipulated for and conceded, the aptitude which they displayed in appreciating political liberty and in comprehending the scope and possibilities of representative government, proved that the innate spirit of freedom, though long repressed by a watchful autocracy, had not been destroyed.

*Cited by Parkman, *Old Regime*, p. 172.

The term 'Administrative Law should not be used, without explanation or definition, inasmuch as it conveys in France and other European countries, a meaning very different from that which prevails in England, and in those countries whose constitutions are derived from the laws of England.

Mr. Dicey, in his work on the Law of the Constitution, has enlarged upon the distinction to which we refer. He points out (what students of the British Constitution have not always remarked) that the principles which lie at the roots of administrative law in England, are not distinguishable from those which are at the roots of the whole system of British law—that in England the term Administrative Law is entirely one of convenience, and by no means frequently used. There is not, in Britain, one law for the citizen and another law for the official. The latter may have special duties and functions, for the performance of which he is answerable, but he enjoys no immunities from the consequences of illegal acts. He cannot plead the authority of the Crown, or of his superior, for an illegal act. The logical corollary of the maxim that "The King can do no wrong," is, that some other person is legally and individually responsible, for every act done in the King's name.

Under the French system, on the other hand, no servant of the government, who, without any malicious or corrupt motive, executes the orders of his superiors, is civilly responsible for his conduct. For the breach of official discipline he is, it may be safely assumed, readily punishable in some form or another, but he nevertheless enjoys a very large

amount of protection against legal proceedings for wrongs done to private citizens. The party wronged by an official in France, must seek relief, not from the judges of the land, but from some official Court. Before such a Court, the question which will be mainly considered, is likely to be, not whether the complainant has been injured, but whether the defendant, say a policeman, has acted in discharge of his duties and in bona fide obedience to the command of his superiors.*

In these pages, however, we use the convenient term administrative law, not as implying the existence of a special code applicable only to state officials, but as including that collection of edicts, ordinances, charters, and statutes, in virtue of which, our country was governed prior to the conquest ; and also the actual results, which have flowed from the exercise of the authority thus conveyed.

The student of the Old Régime, is fortunate in possessing convenient access to a collection of Edicts and Ordinances, comprised in three volumes, which were published by order of the Legislative Assembly of Lower Canada in the year 1854. In 1803, these Edicts and Ordinances had been printed by order of the Legislature, in two volumes, but many of them in this earlier edition were only referred to by citation of their titles.

Volume one of the later publication contains the Royal edicts, ordinances, and declarations of the King of France, in the form delivered by his Council of State. It includes the charters granted to trading companies and to religious

*Law of the Constitution, Dicey, p. 319.

bodies; the edicts for the establishment of justice and the regulation of trade; the edict establishing the Sovereign Council; the Ordinance of 1667; decrees, letters patent, and declarations respecting the fortifications of Montreal, card money, the admiralty, beaver trade, currency, tutors to minors, export and import duties, notarial deeds and a variety of other matters, dating from the year 1627, when the charter to the Hundred Associates was granted, up to the year 1756.

The second volume contains a large number of the *Arrêts et Réglements* of the Sovereign Council. It omits the minutes and records of deliberations, but these are now supplied, in part, by the six portly volumes of Judgments and Deliberations, which have been published by the provincial authorities, at intervals, since 1885. The second part of this volume contains the general ordinances of the Intendants; and in the third part, we have the judgments pronounced by them upon contestations between individuals such as disputes between seigneurs and censitaires, the building or repairing of churches, the extent of corvées, etc., The distinction between an Ordinance and a Judgment does not, however, seem to have been clear to the compilers; and these two latter chapters lack method in their arrangement.

Volume three is complementary. It includes the commissions to the Governors, Intendants, and the minor officials; ordinances of the intendants on matters of justice, and lastly, their ordinances on matters of "Police," *i. e.* municipal regulations, good order, public peace, and general civil administration.

These volumes, by legislative declaration, form part of the laws and jurisprudence of our province. They retain a faithful impress of the past, enchanting alike to the historian and the jurist. As one turns their musty pages, the curtains that veil the past are drawn aside. We see the daring and intrepid pioneers, who wooed the West to win the East; the dark-robed missionaries who carried the Cross as a torch, amid a people who sat in darkness; the busy traders, by fishing banks and beaver brooks, and in the forests where the moose and martin and sable were found. We see the heroic figures of Champlain and La Salle, of Lallement and Brebœuf and many another, exploring mighty waters and pathless forests, and wonder at the courage and faith, that sustained them through fearful nights and days of terror, toil, and danger. We still see Count Frontenac as he stands upon the citadel at Quebec, and defies the armaments of Boston; de Maisonneuve, as he proves his courage upon Place d'Armes, and the busy intendants as they carefully pen their ordinances, or wrangle with the governors about questions of precedence, or write complainingly to the minister at Paris. Here, too, flit before us the forms of the seigneur, the coureur de bois, the captain of militia, the Jesuit, the Sulpician, the Sister of Mercy, the Iroquois, and the habitant: while over all, floats the *fleur de lis* of France—symbol of the power that would fain know and control all that happened at this distance of a thousand leagues!

Historical division of the Old Régime—Jacques Cartier—His commission—Roberval, de la Roche, and their commissions—Authoritative sanctions for exploration—Champlain—His commissions—The Viceroy and the trading Associations—The Company of New France and Richelieu—The West India Company.

The period of 228 years which begins with the first voyage of Jacques Cartier to Canada and concludes with the formal cession of that country to England, might conveniently be divided into three parts. The first, would include the story of the voyages, explorations and endeavours of Cartier, Roberval, de la Roche, de Chastes, de Monts, Champlain and others. The second would begin with the formation of the Company of New France, as one of a series of great trading companies, and conclude with the dissolution of the West Indian Company in the year 1674. The third epoch, taking us back a few years, opens with the creation of the Sovereign Council in 1663; which, with various modifications continued to exist, until the standard of Britain replaced the *fleur de lis* of France.

It will be readily seen, of course, that these divisions of the duration of the old régime, are not absolutely exact, and that they overlap each other. Champlain will be found to play his part in portions of the first and second epochs, while traces of that commercial administration which distinguishes the second epoch, will be met in the third. The division, will fairly serve, however, for the grouping of the main

features of administration and government, during those momentous years when the civil foundations of the province were laid.

The sixteenth century in Canada, even to its very close, presents little of interest to the student of politics. Its achievements were almost wholly barren of permanent value. Probably its only extant witness is a small stone building in the village of Tadousac at the mouth of the gloomy Saguenay.

The glory of being the founder of Canada, has somewhat thoughtlessly been ascribed by most historians to Jacques Cartier. Jacques Cartier, however, founded no settlement, and established no colony. He navigated the St Lawrence to the foot of the rapids at Montreal; noted the situation of Stadacona and Hochelaga; something of the vegetation and the inhabitants of the country,—of all which he has written a narrative of great interest; but he does not seem to have been impressed by the possibilities for the development of the Country. He had no vision of its future, such as we may believe Champlain to have had. His mind seems to have dwelt on gold, and precious stones, and mineral wealth. Even of these his acquisitions were merely iron pyrites and quartz. His last act in Canada, was to desert his chief. The name of Jacques Cartier is the first, but assuredly not the greatest, in the history of Canada.

The commission granted by Francis I. to Jacques Cartier, on the 17th October 1540, distinguished the explorer as Captain-general, and Master-pilot of the expedition. It gave no instructions for his special guidance in the new

country, and the preamble professes, chiefly, a desire to convert the natives to a knowledge of the Christian faith. The only specific powers granted, are those which commanded the provost of Paris, the baillis of Rouen, Caen, and Orleans, Blois, and Tours, and the seneschals of Maine, Anjou, and Guienne, to deliver to Jacques Cartier, for the purpose of manning his ships, persons to the number of fifty, held upon accusation of crimes, except those who were accused of high treason or counterfeiting. Of such material was Jacques Cartier's Emerillon crew composed.*

Serious attempts at colonization appear to have been made by Jean Francois de la Roque, Sieur de Roberval, the first viceroy of Canada, and by his successor the Marquis de la Roche, but disasters overtook them both. Canada however never lacked for visitors. In 1578 there were one hundred and fifty French vessels at Newfoundland, besides as many ships of other nations. But the objects of these expeditions were wholly commercial. The wealth in fisheries, with which the Banks of Newfoundland abounded, was widely known to the seaport towns of Europe. High prices and liberal promises were made by Dieppe, Rochelle, Rouen, and St Malo, for trading privileges. It was part of the duty of de la Roche to break up this traffic. According to his commission: "Nous leur défendons très expressément faire, " ni trafiquer sans le su et consentement de notre dit lieutenant, sous peine a ceux qui seront trouvés, de perdition de " tous leurs vaisseaux et marchandises."

The powers granted by Henry IV to de la Roche by

*Edits et Ordonnance III. p. 1.

the commission dated 12th January 1598, were much greater than those conveyed to Jacques Cartier. He was styled Lieutenant-general of Canada, Hochelaga, Newfoundland, Labrador, River of the Grand Bay of Norembegue and adjacent countries; and was appointed Conductor, Chief governor, and Captain of the enterprise. He had all the powers of an admiral, and of the commander of an army. He was permitted to grant patents of nobility of all degrees, to those who might settle in the country and might be thought worthy of such honours; or in a less degree he might simply grant, for six years, exemptions from all annual imposts except the duty of serving in war. In short, he was empowered to do whatever he might deem just and proper in the interest of the king's service.* In virtue of his powers, he got together from the prisons of France that ill-fated band of Forty Thieves, who were landed upon the desolate sands of Sable island, and abandoned for five years when of the forty only twelve were found to have survived. The disparity between this lofty authority and meagre achievement, would be ludicrous but for the misfortunes that seem to have pursued de La Roche to his death.

At this point we may note that the history of discovery and exploration, directed by the expansive energies of trade, shows in Canada as elsewhere, that some authoritative sanction has always been regarded as essential to such enterprises, and that administrative powers have invariably been granted to the leaders of expedition for discovery. Bjarne and Thorfinn may have sailed forth from the fiords

*Edits et Ordonnances III. p. 8.

of Norway with no warrant but that which their own stout hearts supplied; but Columbus and Cabot, carried in their cabins the express permission and authorization of those to whom they owed allegiance. The commissions of Jacques Cartier and de la Roche, which conveyed to them the royal sanction for their expeditions, and without which they would hardly have dreamed of setting sail to the distant West, may be read in our own *Edits et Ordonnances*.^{*} They and their successors, journeyed and explored in the king's name and with the king's permission. Canada was never open to all the world, under the old régime, for individual exploitation. Over the whole country, by lake and forest, river and stream, extended the authority of the Kings of France, felt by skulking and outlawed *coureurs de bois*, and by unlicensed fishermen and traders, unacknowledged only by the fierce and vengeful Iroquois.

Champlain's connection with Canada dates from the year 1603, when a number of merchants obtained permission to fit out an expedition for commercial purposes, and appointed him leader. He visited Tadousac; noted the deserted condition of Stadacona and Hochelaga; followed the trail by the banks of the Lachine rapids to the shores of Lake St Louis. Dr. Kingsford has declared his conviction that Champlain was a Huguenot. There is no doubt that De Monts, who, with Champlain, organized a new company, was of that persuasion. At this period, the subsequent policy of exclusion from Canada of all but Roman Catholics had not intervened; and the two vessels that left Havre de

^{*}Ibid III, pp. 1 and 7.

Grace, France, on the 17th April, 1604, contained Huguenots and Catholics both.

As we do not attempt more than a rapid sketch of authorized administration, we summarize much detail in the statement, that Aymar De Chaste, Sieur De Monts, The Count de Soissons, the Prince de Condé, the Admiral de Montmorency, and the Duc de Ventadour, all entrusted with delegated powers of administrative authority over the colony, sub-delegated their authority successively in favour of Champlain. On the 15th October, 1612, Champlain received a special commission from the Count de Soissons, who had assumed the position of Lieutenant General of the colony.* Scarcely was the commission drawn when the latter died. Champlain, however, continued his explorations, presumably under authority granted by de Condé and later by de Montmorency. The commissions issued by these Viceroyes have not been preserved or at least published. The next commission in point of time of which we have record, is that of the Duc de Ventadour dated February, 1625, in favour of Champlain.† It will be observed, upon examination of the Commissions granted to Champlain by the Comte de Soissons and later by the Duc de Ventadour, that he was not entrusted with any power to regulate trade or to enforce the conditions upon which the various companies of merchants were allowed to trade. Parkman states, that Champlain was given full control over the trade in furs at and above Quebec, but I have been unable to confirm this by an examination of his Commissions. He was empowered to construct forts, to

*Ibid. p. 11.

†Ibid. p. 13.

compel the obedience of the natives of the country, to instruct them in the knowledge and service of God, and in the light and faith of the Catholic Apostolic and Roman religion. He was empowered also to appoint officials for the distribution of justice, and the maintenance of peace and good order; also to make ordinances and regulations on these matters .

There was of course little occasion for the exercise of local administrative powers. The "*Abitation de Quebec*" was not constructed until 1608. The prowess of the Iroquois seems to have swept away the villages of Stadacona and Hochelaga described by Cartier. Still, Champlain informs us that he published ordinances for the good government of the colony, and we learn also, that in the exercise of his powers, he expelled from Canada, two families regarded by him as idle and worthless.

Champlain was also authorized to wage war, to make treaties and alliances for the glory of His Majesty the King, and was permitted to search carefully for mines of gold, silver, copper and other metals and minerals. The only reference to trade is significant. He is "permitted" to seize and apprehend and to conduct to France, there to be dealt with according to justice, all French or others, whom he may detect trading or trafficking with the aborigines of the country; but his authority was limited to detective duty. The viceroys of New France reserved to themselves the sources of emolument and dispensed the privileges of trade for valuable considerations. For

*Ibid III, p. 13.

these reasons they preferred to reside in France. They were quite willing that Champlain should engage in the vicissitudinous explorations which were the delight of that intrepid voyageur ; and to that end granted him various high-sounding attributes of authority ; but the trade patronage they carefully reserved to themselves. It was indeed a most valuable perquisite. The viceroyalty was sold by one incumbent to his successor. Eleven thousand crowns, we are told, were paid by de Montmorenci to de Condé. The result was, that little or no thought was given to colonization. Traders and companies were ever ready, in exchange for trading privileges, to make promises that settlements would be established ; but administrative power was not strong enough to reach across the Atlantic to compel the fulfilment of such promises. A change of viceroys usually resulted in a change of patronage. Montmorenci, who succeeded de Condé, suppressed the company of Merchants of St. Malo and Rouen, and conferred the trade upon the Huguenot brothers William and Emery de Caen. The result was a repetition of the disorders that like procedure had previously occasioned. The rival traders, we are told, filled Quebec with their quarrels. Champlain's authority, for a time, was set at naught, and he was forced to occupy his newly built fort with a band of armed men. The evil rose to such a pitch, that he joined with the Recollet Fathers and the better disposed among the colonists, in sending one of the friars to lay their grievances before the King, with strenuous complaints of the manner in which the trade policy of the day retarded progress. The rival companies then compromised

their disputes by a temporary union. In disgust, de Montmorenci retired from the viceroyalty in favour of the Duc de Ventadour, but not before receiving his price for the office.*

Champlain was still powerless to check the evils with which the colony struggled. The fur traders although pledged to promote its growth, did what they could to prevent it, their interests being opposed to settlement and population. They feared too, a sudden revocation of their privileges and thought only of making profit while their privileges lasted.

Champlain contended with this state of things with mingled zeal and fortitude. He went, every year, to France, labouring for the colony. To throw open trade to all competitors was a policy far beyond the wisdom of the century, but it was evident to him that some strong hand was needed to control events. His commission gave him inadequate powers, but it does not seem to have occurred to him that an increase of them was possible.

These companies or associations appear to have acquired their privileges usually from the viceroy for the time being, but their tenure of such privileges depended upon the tenure of the viceroy. Intrigues at Court were constant. Champlain laboured to convince the king and the viceroys of the importance of establishing settlements and overcoming the hostile Iroquois so that the colonists might dwell in security. He also complained bitterly to the king of the wretched manner in which the affairs of the colony were being jeopardized by rivalries and disputes. His representations were at length

*Parkman, *Pioneers of France* p. 423.

effective ; William de Caen was the last of those to whom special privileges were granted from delegated authority. Henceforth the king was to be the direct source of authority.

The great champion of absolutism, Richelieu, was now supreme in France. The disorganized condition of the affairs of New France did not long escape him. The traffic in vice-royalties and trading privileges, the intrigues at Court by the agents of rival companies, and the conspicuous absence of effective authority, were all to disappear. The period marks a complete change in method of administration as regards the colony. It does not display, to a complete degree, the absolutism that marked a later day, when le Grand Monarque sat upon the throne of France, for as yet Louis XIII is king. Authority is still delegated, but it is delegated to a powerful and wealthy company. The petty companies and traders of the past are swept away. A broad and comprehensive plan of administration is projected. A hundred associates confederate for trade and colonization and religion; and a Governor who is to dwell in the colony, is appointed,—none other than Champlain himself. The charter of the Company of New France bears testimony to the statecraft of no ordinary mind, and although its vicissitudes and failures prevent us from magnifying its achievements, it undoubtedly marks a special epoch in the history of administrative affairs in Canada.*

*It is important to distinguish between the Company of the Hundred Associates, also known as *La Compagnie de la Nouvelle France*, and the other companies or associations to whom special trading privileges had been granted.

The Abbé Faillon in his learned work "*Histoire de la Colonie Française*" describes the various bodies of merchants who prior to 1627, enjoyed trading privileges in new France as "*La Compagnie des*

The colony thus not only came under the immediate influence of the imperial mind of Richelieu, but a generation later was placed, by the great minister Colbert, along with the whole Colonial empire of France, in the control of one of those vast trading corporations,* which sprang into existence in obedience to the impulse of the age, an impulse which neither Richelieu nor Colbert created, but which both, in succession, endeavoured to utilize for the commercial aggrandizement of France.

These European trading companies may be traced from the beginning of the seventeenth century. The East India Company was organized in 1603, the Company of the Hundred Associates, in 1627, and the West Indian Company

Associés" and "Les Marchands Associés." He then proceeds to speak of the suppression of the Company of Associates, and the creation of "La Compagnie de la Nouvelle France" on the 29th April, 1627. Even so recent a historian as Dr. Kingsford fails to distinguish clearly between the Hundred Associates and their predecessors whom he also describes rather indefinitely as Associates. As a matter of fact however "La Compagnie de la Nouvelle France" was none other than the Company of One Hundred Associates. In the fourth paragraph of the charter granted by Louis XIV on the 29th April 1627, we read: "En revoquant les articles ci-devant accordés a Guillaume de Caen et ses associés, comme contraire a l'intention du Roi, mon dit Seigneur le Cardinal a convié les Sieurs de Rocquemen etc., de lier une forte compagnie pour cet effet, s'assembler sur ce sujet, et en proposer les memoires. Ce qu'ayant été par eux effectué, ils ont promis à mon dit seigneur le Cardinal de dresser une compagnie de cent associés et faire tous leurs efforts pour peupler La Nouvelle France dite Canada." All through the charter the reference is to "les dits associés." Indeed nowhere in the charter do we meet with the name "La Compagnie de la Nouvelle France." From another document passed on the 7th May following we learn that the associates "se dira et nominera la compagnie de la Nouvelle France; et du dit nom seront intitulées toutes commissions et expéditions souscrites et signés, etc."

*The West India Company: Edits et Ordonnances I. 40.

in 1664. Voyagers to the New World and to India, brought back tales that quickened wonderfully the desire to trade. The world has always been ready to listen to news of some El Dorado. The ships of Portugal, and Spain, and France, whitened every sea ; bringing back the products of foreign lands, and stories of unharvested wealth that fired the fancy of all Western Europe, and kindled an almost frantic desire to participate in trade with the newly discovered lands. The trading company was thus easily developed. Those who had much, and those who had little, greedily embraced the opportunity of becoming shareholders in enterprises that promised to increase their contributions in untold measure. Nobles and commoners, ecclesiastics, advocates, scholars, soldiers, and all classes, were invited by royal sanction to unite their offerings and ventures. It was specially decreed that the nobility might join these companies without derogating from their status or privileges. With specious craft the hope of gain through trade was not set prominently forward in the charters of the time. Foremost among the objects of these companies, in France and Spain at least, was the glory of God, and the conversion of the heathen to the Roman Catholic and Apostolic faith. Enterprises that Heaven was thus sure to approve, and that promised, in addition, the wealth of earth, could not but become enormously popular. Accordingly, we meet in our survey of Canadian history, the great Company of the Hundred Associates, and the still greater company of the West Indies contemporaneous with the East India Company, of both of which Louis himself and Colbert his minister, were shareholders and promoters.

The trading companies, with special royal charters and administrative powers, that made Canada the field of exclusive trade operations were thus four in number : The Company of New France, The West India Company, the Company of Canada, and The Company of the West, better known as La Compagnie des Indes.* It will be observed that we do not include the irregular trading companies that preceded the establishment of the Company of New France, for the reason that those companies possessed no administrative powers and derived their authority from viceroys only.

*Vide Edits et Ordonnances II. 441.

III.

Charter of the Company of New France—Analysis of its provisions—Its administration—Concession of the Island of Montreal—De Maissonneuve—Abandonment of its charter by the company of New France.

The charter of the Company of the Hundred Associates is so important and so interesting a document and to the ordinary reader so difficult of access, that no apology need be made for presenting a translation of its preamble at least, and a detailed account of its provisions. It reveals in many particulars the condition of things which it sought to remedy, and is also valuable as indicating the colonial spirit of France in the seventeenth century. The preamble is as follows :—

“ Deed establishing the Company of One Hundred Associates for trade with Canada, containing the articles granted to the said company by the Cardinal Richelieu on the 28th April, 1667.”

“ The King, having the same desire as the late King Henry the Great, his father of glorious memory, to explore and discover the countries, lands, and territories of New France called Canada, and a place suitable for the establishment of a colony, so as to endeavour, with the divine aid, to bring the nations who inhabit them to the knowledge of the true God, and to cause them to be taught and instructed in the Catholic, Apostolic and Roman faith and religion ; Monseigneur the Cardinal Richelieu, grand master, chief and general super-

intendant of navigation and commerce in France, being obliged by the duties of his office to bring to success the pious wishes and designs of his said royal masters, hath formed the opinion that the only means of bringing those nations to the knowledge of the true God, is to people the said country with native French Catholics, who by their example, may incline those nations to the Christian religion, and a civilized life, and even to the establishment there of the royal authority ; also to derive from the said newly discovered lands, some profitable trade for the advantage of the King's subjects ; Nevertheless, those to whom this task has been confided, have had so little interest in performing it, that up to the present only one settlement has been made there, wherein are maintained ordinarily forty or fifty Frenchmen, rather for the affairs of the traders than for the welfare and advantage of the service of the king of the country ; and so poorly have these been assisted up to the present, that the king has received numerous complaints in council ; and the cultivation of the land has been so little advanced, that if there had been any neglect in sending each year flour and other necessities for this small number of men, they would have died of starvation, not having wherewith to nourish themselves for a single month after the time that the ships are accustomed to arrive there, every year.

“ Those also who had up to the present obtained for themselves the exclusive trade of the country, have had so little ability or wish to people or cultivate it, that in the fifteen years which was the term of their charter, they did not attempt to convey more than eighteen men there, and although at present there are still seven years to elapse, according to

the articles drawn, they have not done their duty, nor begun to undertake that which they bound themselves to do.

“ For although they were bound to expend thirty six livres on each person who was willing to go to the said country, New France, they placed many difficulties in the way, and frightened those who were willing to settle there ; and although it seems they were willing to let them trade with the savages for their advantage, still they did so with so many restrictions that if they had even a bushel of wheat by their labours more than was required for their own livelihood, they were not allowed to assist their companions or any who had need, but were obliged to hand it to those who had the charter.

“ These disorders having reached this stage, Monseigneur the Cardinal believed that they demanded attention, and that in removing them, it was right to follow the king's intention, so that, by securing the conversion of those nations and the establishment of a powerful colony in this province, New France might be acquired throughout its whole extent, once for all, without danger of the enemies of the Crown snatching it from the French, as might happen if precaution were not taken.

“ For this purpose, having examined numerous proposals, which did not however provide for the peopling of the country, and having revoked the articles heretofore granted to William of Caen and his associates, as contrary to the intentions of the king, Monseigneur the Cardinal has entrusted Sieurs de Rocquemont, Houel, Lataignant, Dablon, Duchesne et Castillon to form a strong company and for this purpose to meet together, to discuss the subject and propose the

details thereof. Which having been done, they agreed with Monseigneur the Cardinal to form a company of One Hundred Associates and to do their utmost to people New France called Canada, according to the articles hereinafter mentioned.

By article i. the "Cent Associés" undertook to transport during the year 1628, two or three hundred men of all trades, and during the fifteen years following to increase this number to four thousand of both sexes, with the necessaries of life for three years.

By article ii. it was forbidden to introduce foreigners or others than French Catholics into the colony.

By article iii. it was agreed, that in each settlement there should be at least three priests for the conversion of the savages and the consolation of the colonists, these ecclesiastics to be maintained and provided for during the said fifteen years, with the option to the Company, of giving to the clergy sufficient cleared ground for their subsistence.

Article iv. conveyed to the company in perpetuity the whole of New France, with the coasts extending from Florida northwards to the arctic circle and from Newfoundland to the sources of the St Lawrence and its tributary waters. The Company were given complete powers for military defence. They were constituted seigneurs of the whole territory thus conveyed. The king reserved his rights to homage, to be witnessed by the presentation of a crown of gold of eight marks weight to each successive King of France, and also reserved appointment of the judges.

Article v. empowered the company to improve and administer the land thus conveyed, and to bestow titles and

honours,—in short to establish the seigneurial system familiar to them in France. The creation of duchies, earldoms and baronies required the king's sanction.

Article vi. revoked all previous grants of territory to others. Article vii. gave the company a perpetual monopoly of the fur trade and of all other commerce for fifteen years. By Article viii. the French colonists already settled might engage in barter provided they brought their furs to the company's stores. By Article ix. the company received two ships of war. Article x. made certain stipulation of forfeiture, in case the company failed to fulfil its undertakings. Article xi. gave the company the right to appoint the commanders of their forts and ships. By Article xii. four culverins were given to the company. Article xiii. promised the title of master workman to those who exercised their craft in the colony for six years and might then wish to return to France.

By Article xiv. the trade of the colony was declared free for fifteen years from all duties and imposts. Article xv. exempted war stores from duties and imposts. Article xvi. permitted nobles and commoners alike to join the Company, and granted twelve blank commissions of nobility to be filled up at the company's pleasure. Article xvii. naturalized and gave full rights to the descendants of French colonists born in the colony, and to converted and baptized savages. Article xviii. extend the delays accorded for the fulfilment of stipulations, in the event of civil or other war. By article xix. the king reserved his right to execute the foregoing articles and by article xx. the company was authorized to make by-laws and regulations, which were to be submitted to the king in council for approval.

Such were the provisions of this historic document. A trading company was now feudal proprietor of all the domains of France in North America. The King heaped favours upon it as has been seen, reserving only fealty and homage, the appointments of judicial officers, and the confirmation of patents to nobility. The associates, of whom Champlain was one, entered upon their functions with a capital of 300,000 livres.*

The administration of this magnificent enterprise the Company of New France was marked by misfortune and failure. The first transports of men and provisions were captured by Louis Kertk. Quebec itself was taken, and for three years passed under the domain of England, Louis Kertk installing himself as governor. By the treaty of St. Germain-en-Laye, however, signed March 29, 1632, Quebec through the diplomacy of Richelieu was restored to France. The company of a hundred partners resumed their administration, but proved wholly unable to control affairs at the great distance which separated France and Canada. After much expenditure and loss they commuted their exclusive privileges in the colony by agreeing to accept an annual payment of 1000 beaver skins, but do not seem to have had any representative in the colony to see that the bargain was carried out with fidelity. They relied upon the governor to do this, but the governor was disinclined to assume the task. "I wish," wrote Argenson, "they would send somebody to look after their affairs here. I would gladly give him the same lodging and entertainment as myself."

*Pioneers of New France, Parkman p. 432.

About the time of this commutation, in 1647, the direction of the fur trade was placed in the hands of a council composed of the Governor, the Superior of the Jesuits and others ; subsequently another council was established without the consent of the company, and in league with prominent merchants so engrossed the trade of the colony, that the inhabitants at large profited nothing by the cession of the company's privileges. A trading oligarchy thus grew up. Finally, in 1660, the company sent out from France, Peronne Dumesnil, an advocate of aggressive and tenacious character, with powers as controller, intendant, and judge, over their affairs. His advent caused great commotion. At times his life was in danger. Those who had enjoyed the monopolies of trade resented his interference and refused to acknowledge his authority. To such length did heat and passion carry away certain of the disputants, that Dumesnil's son, Peronne de Touche, was set upon one day and so grievously assaulted that in a few days he died. "At this time" says Parkman "Quebec was a little hell of discord."

The Council which, from 1647 to 1663, assisted the Governor (who does not however seem to have been bound to accept its advice) was afterwards referred to as "*L'ancien conseil*." It was established as the result of complaints and petitions. It consisted of the Governor, the Bishop or the Superior of the Jesuits, and the Governor of Montreal. The Council took cognizance of the affairs of the colony generally. The Commander of the Fleet, and the Syndics of the three towns had the right of audience. An audit of accounts was established. Officials held office for three years. The inhabitants were granted freedom to trade, but the furs had to be brought to

the public stores to be received at a standard price. A charge of 25,000 livres was established on the trade, for the governors and garrisons of Quebec and Three Rivers, and 10,000 livres for the garrison at Montreal. No strangers could journey to Canada, but by the company's ships. We thus perceive the exclusive and prohibitive character of the company's administration and are not surprised to learn that progress was slow.

"*L'Ancien Conseil*" kept registers, but it is not known where they have been deposited. Nor are the *Registres Civiles* of the *Prévôté de Québec* yet available for public use.

The five governors who administered affairs in Canada between the death of Champlain and the establishment of the Sovereign Council, developed no new policy in the colony. They were the representatives of the Company of New France, with power over life and property, but could follow no line of conduct not prescribed for them. M. de Montmagny who succeeded Champlain, lost no time in repairing and strengthening the fort at Quebec. He also traced a plan of Quebec, marking out the streets according to a system. A pillory was erected, and served as well for the publication of written notices, and proclamations to the inhabitants. This governor also enlarged the fort at Three Rivers, planted by Champlain.

Up to this time Quebec had been nothing more than a mission and a religious station, but under the governors Argenson and Avaugour, attempts were made to separate civil and religious functions. Laval the Apostolic Vicar, contended strenuously with the civil rulers upon points of precedence and authority. Argenson resisted the doctrine, which he attributed to Laval, that "a Bishop can do what he likes."

Avaugour no less than his predecessor failed to co-operate harmoniously with the religious head of the colony. Trade disputes and the inveterate habit of his councillors to peculate, led him in 1662 to dissolve and reconstruct his Council—an indication of the gubernatorial powers of the day. In the same year, he was himself recalled at the instance, it is said, of Laval, and his successor De Mézy became the official head of re-constituted civil government.

While Montmagny was governor, an important separation of administrative powers was effected by the establishment of a colony at Montreal. The city of Montreal traces its legal creation to the 17th December 1640, on which date the Company of New France made a formal concession to Pierre Chevrier and Roger de la Dauversière of the western part of the island, “entre le lac Saint-Pierre et le lac Saint-Louis, à “prendre la dite partie de l’isle à la pointe qui regarde le “nord-est, tirant en toute sa largeur vers le sud-oust, jusqu’a “la Montagne de Montreal qui a donné le nom a la dite isle “et par dela icelle montagne encore quatres lieues francaises “ou environ et jusqu’a l’embouchure du petit ruisseau qui “est dans la dite Isle a la dite espace de quatre lieues ou “environ, se déchargant dans le canal qui separe la dite Isle d’une autre isle appelée l’Isle de Jésus.” *

The company of New France forbade the cessionaires to engage in the fur trade beyond what was necessary for the personal use of the local colony, unless the skins were handed over to the agents of the company at the price fixed by the Company.

*Edits et Ordonnances, I. p. 20.

The company also reserved its right to build a fort on the "mountain at Montreal," and to a specified area round about such fort for the use of the garrison; a right which its posterity are doubtless grateful the company did not avail itself of.

The company also retained its rights to fealty and homage as seigneurs; acknowledgment thereof to be made at the fort St. Louis at Quebec. The mutation-fee was fixed at one piece of gold, graven with the figure of New France as shown on the Company's seal.

This concession was ratified by Royal Edict on the 13th February 1644, two years after Maisonneuve had taken possession of it.*

The Company of New France on the 21st April, 1659, made a cession of the remainder of the island of Montreal, to the Company of Montreal.†

The editors of our *Edits et Ordonnances* erroneously describe the two conveyances above mentioned, as having been made to the Seminary of Montreal; but the title of the Seminary dates from the 9th of March 1663, when a deed of donation was executed in their favour by the original cessionaires.‡

De Maisonneuve was appointed governor of the colony at Montreal by the King, upon nomination by the inhabitants of Montreal. The privilege of nominating the governor was granted by Louis XIV in ratifying the concession. In the deed of ratification, Louis refers to Montreal "dont les terres

*Ibid. p. 24.

†Ibid. p. 29.

‡Ibid. p. 91.

“ sont les plus fertiles et mieux tempérées ; et pour faire vivre
“ les habitants en paix, police, et concorde, nous leur permet-
“ tons d’y mettre tel capitaine ou gouverneur particulier
“ qu’ils nous voudront nommer.” The appointment was not
for any fixed term, while the rule for the term of the Govern-
ors at Quebec was three years.*

De Maisonneuve thus saw several governors come and go while he remained undisturbed at the head of the colony at Montreal. The distance between Montreal and Quebec also made him virtually independent of his nominal superior. One result of this was that a certain jealous rivalry grew up between the two towns. One governor endeavoured to compel the Montrealists to trade with Quebec alone instead of directly with France, but this was not sanctioned by the company. Some soldiers who fired a *feu de joie* in honour of de Maisonneuve were imprisoned by order of the governor.

De Mezy, when the Sovereign Council was appointed in 1663, removed de Maisonneuve from office, and immediately re-appointed him, to show that whereas formerly de Maisonneuve owed his position to the Company, he now owed it to the governor-general.

De Maisonneuve administered local affairs at Ville Marie, nominally subject to the governor at Quebec, but practically independent. He promulgated ordinances for the local welfare. Ten of these have been preserved ; four relating to the sale of liquor, three to the defences of the town, the others to the erection of a church, and the administration of justice.

In 1663, the Sovereign Council assumed control of the

*De Montmagny however was governor for twelve years ; his term being thrice renewed.

administration of justice in Montreal. This was resented by de Maisonneuve, who, in 1666, called a meeting of the inhabitants to elect five judges, four of whom, in accordance with one of the ordinances, were to make "police" regulations. For a time there were rival jurisdictions. Talon, the intendant, however, restored its local rights to Montreal.*

In 1659 the Company of New France ceded all its rights to the inhabitants of the new colony, in consideration of the latter assuming the expenses of maintaining the civic and religious administration. The Company reserved only its rights in Acadie, Miscou, and Cap Breton.

Three years later the Company abandoned its charter, and dissolved itself by formal act on the 24th February, 1663, at the request or command of Louis.† The associates humbly submitted to his majesty's sense of justice and equity for such recompense as, in view of their losses, it might please him to bestow. In accepting the company's demission, however, the king was silent on the subject of recompense, and expressed his regret at the weak condition of the colony and company. At this time, under the guidance of his great minister Colbert, he had other plans for the administration of the colony. In the month of April following, the Sovereign Council was established by royal edict (April, 1663).

* Kingsford, vol. 1, p. 310.

† Edits et Ordonnances, vol. I, p. 31.

IV.

The West India Company—Its administrative powers—The Company of Canada—La Compagnie d'Occident—The Mississippi Scheme—La Compagnie des Indes—Trade restrictions and monopolies.

The creation of the Sovereign Council was only part of a far-reaching scheme that Louis had planned for New France. About a year afterwards, on May 24th, 1664, the King signed an edict creating the WEST INDIA COMPANY (*Compagnie des Indes Occidentales*.)^{*} Not Canada alone was included within the scope of this company's operations. Western Africa, from Cape Verd to the Cape of Good Hope, South America, between the rivers Amazon and Orinoco, Cayenne and the Antilles were also granted to it, with reservations only of fealty and homage. A monopoly of trade was given for forty years. The trading vessels and cargoes of all others were subject to confiscation. It was endowed with sovereign powers for armament, defence and government, throughout its wide domain. As regards civil and judicial administration, the enactments of the edict were as follows :—

xxx. " Pourra la dite compagnie comme seigneurs haut-justiciers de tout les dits pays, établir des juges et officiers partout ou besoin sera, et ou elle trouvera à propos de les déposer et destituer, quand bon lui semblera, lesquels connaîtront de toutes affaires de justice, police, commerce, navigation tant civiles que criminelles ; et ou sera besoin d'établir des Conseils Souverains, les officiers dont ils seront

^{*}Edits et Ordonnances, I, p. 40,

“ composés, nous seront nommé et présentés par les directeurs
“ généraux de la dite compagnie ; et sur les dites nominations
“ les provisions seront expédiés.”

xxxiii. “ Seront les juges établis en tous les dits lieux
“ tenus de juger suivant les lois et ordonnances du royaume,
“ et les officiers de suivre et conformer a la coutume de la
“ prévôté et vicomté de Paris, suivant laquelle les habitants
“ pourront contracter sans que l'on y puisse introduire aucune
“ coutume pour éviter la diversité.”

The company was also endowed by its charter with seigniorial rights over all the lands conveyed to it, and could sell or otherwise bestow fiefs at pleasure (Art xxii, xxxiii.)

It was authorized to establish governors wherever desired, to wage war and conclude treaties of peace or alliance with the peoples in their territories, subject to the King's approval (Art. xxxix.)

On the 18th August 1666, M. de la Bourroys, agent general of the company, presented to the Marquis de Tracy the lieutenant general, a petition containing thirty-one articles relating to the rights and claims of this great company.*

It was asked that the company be recognized as seigneurs of the country ; that its right to name the officers of the Sovereign Council, judges, and other officials, be admitted ; that the agent-general of the company be admitted to the Council and have precedence over other councillors. These claims were admitted and the petition, with de Tracy's marginal observations, was enregistered. M. Peuvret de Mesnic

*Edits et Ordonnances, Vol. I, p. 51.

was appointed attorney-general at Quebec, and M. Chartier lieutenant with jurisdiction in matters civil and criminal.

The West India Company was the creation of an exalted king and an ambitious minister at the summit of their power. France at the middle of the seventeenth century led the world in colonial enterprise. Holland had preceded her, having wrested colonies on all seas from Spain. England in turn was to wrest colonial supremacy from France. But meantime Colbert was guiding France into a new path. The stimulus of international rivalry led him to devote his energies to promoting the increase of trade. The seventeenth century, however, had not discovered that trade could only be developed by waiting upon the wants of mankind. Its method was to get possession of some rich tract in the New World, and to exploit it under restrictions and exclusive supervision. Louis and his minister, treated Canada, not as they treated their own subjects in France but much as one would have treated a conquered people, binding her with rigid rules and restraining all independence of action.

The method of governing by a chartered company, borrowed from the Dutch, was doomed to failure. The colony was a veritable prey to the West India Company. Nobody but the company had the right to bring in the necessaries of life, and nobody but the company could exercise the traffic which alone could enable the colonists to pay for these necessaries. Moreover, the supplies were insufficient and the prices exorbitant.* The Canadian merchants remonstrated. Under pressure, the company gave up its monopoly, reserving the right to levy one-fourth of the beaver skins and one

* Parkman : Old Regime, p. 175.

tenth of the moose skins ; it also reserved the entire trade of the extensive Tadousac district, but relieved the colony of the obligation to pay 1000 beaver skins annually.* Still, this did not prevent continued disaster. The West India Company within ten years lost 3,523,000 livres, besides blighting all the colonies placed under its control. Finally in December, 1674, its charter was revoked and its enormous privileges reverted to the Crown of France. Colbert's great company had proved a gigantic failure.

On the 31st May, 1701, the king of France, approved, by edict, thirty regulations drawn up by sixty-three colonists of Canada, including the Governor de Callière, the Intendant Champigny and members of the council for the formation of a beaver company, to be called the COMPANY OF CANADA.† The beaver trade had fallen into frightful disorganization. One, Oudiette, was the collector or fermier of the king's imposts. He had paid the Crown 350,000 livres for the privilege. He had the exclusive right of transporting the beaver skins to France, but was compelled to purchase all that the colonists delivered. The market soon became glutted and Oudiette was a bankrupt. Other farmers of the revenue took his place with like results. Their bills of exchange were unpaid and Canada was filled with distress and consternation.

The Company of Canada was an attempt to solve the difficulty. How it succeeded may be surmised from the 16th regulation, which compelled every trader in Canada, under pain of entire exclusion from trade, to become a shareholder. A fashion of small hats, is said to have augmented the difficulty

* Edits et Ordonnances, I, p. 60.

† Edits et Ordonnances, I, p. 280.

arising from the surfeit of beavers in the market. At all events, the attempt to promote trade without regard to supply and demand resulted in collapse. Another company, composed of Aubert and others, was organized in 1707.* No trader was allowed to keep a beaver skin in his possession, longer than forty-eight hours, and the company, like its predecessor, was to receive it and pay for it by written promises. Again the market was glutted and the promises of payment dishonoured, confusion and distress ensuing.

In 1717 another company, magnificent in its purview, was organized. It was styled LA COMPAGNIE D'OCCIDENT. Its charter was most elaborate, comprising fifty-six articles.† The development of Louisiana was its principal object, and the references to Canada are slight. The government at Paris declared that it would regulate, according to the demands of trade, the quantities of beaver skins that the company would be obliged to receive, and the prices it would have to pay. In the following year, 11th July 1718, an arrêt was passed, requiring the delivery of all beaver skins captured, to the company at its stores, and forbidding trade with the colonists of New England—a prohibition that is frequently met with in the edicts of the old régime. This Company of the West was promoted by none other than the celebrated John Law. It constituted a leading feature of the notorious Mississippi Scheme, destined soon to collapse with ruin to thousands. Canadians may learn with surprise, what is now for the first time pointed out, that the charter of this ill-starred enterprise forms part of their own archives.

* Edits et Ordonnances, I, p. 302.

† Ibid, p. 377.

From an arrêt, of June 1719, we learn that the *Compagnie d'Occident* was succeeded in Canada by LA COMPAGNIE DES INDES, and under this name it was known in Canada. It exercised all the privileges and monopolies of the original charter and subsequent arrêts, until the year 1772.*

The restrictions and monopolies of trade, which were imposed by royal authority, by the council, the governor, the intendants, and most seriously impeded the colony's growth. The Huguenots, who, in aptitude for trade and colonization, were unsurpassed in Europe, promised, before the creation of the company of New France, to form an important element in the colony. Of the early explorers, De Monts, and the DeCaens were Huguenots; and Dr. Kingsford, in his elaborate history advances with much confidence and supports with considerable force the theory that Champlain was also of the reformed faith. The charter of the hundred associates, however, restricted the entry of colonists to French Catholics alone. Heretics were rigorously discouraged, and by special regulation in 1677, all foreign merchants were forbidden to trade with the Indians, or, upon any pretext, to manufacture wearing apparel, or to sell liquors or tobacco unless in bulk. They could only sell their importations; and with regard to these commodities, the Council undertook to fix the percentage of profit at which they might be sold, a tariff being fixed every spring upon the arrival of the ships from France.†

* From the Articles of Capitulation, however, (Art. 25) it would seem that this company continued its operations until the conquest; but whether under royal sanction or not I cannot affirm.

† Vide Arrêts June, 1664, and May, 1676. Edits et Ordonnances, I, p. 29, 65.

Not only, moreover, was the price of the beaver fixed by decree, varying according to its quality *sec, gras* or *Muscovite*, but the habitant and traders were obliged to bring their furs and skins to the trading stores of the trading company, there to receive in paper money the price fixed by administrative authority. Trade with the colonists of New England or with any other country than France, involved confiscation. *

It is also to be remarked that out of the beaver trade a great evil arose. The young, active and hardy settlers betook themselves to the woods, beyond the reach of governors and intendants and councils. Beneath the brilliant skies and among the leafy shades of the primeval woods, the *coureurs de bois* felt that sense of freedom which was denied them in the settlements. In vain were all the resources of administrative authority exercised against them ; in vain did threats of capital punishment even, alternate with amnesties of pardon. The fur trade was profitable, and the organized life of the colony was intolerable ; the *coureurs de bois* accordingly roamed the forests, and the towns remained weak in men.

* Edits et Ord. I. p. 285, 378, 519, etc., II., p. 95.

The Sovereign Council — Various edicts modifying it — The Governor — The Intendant — Their functions — The Council's labours.

The Company of New France retroceded to the King its rights and privileges on the 24th February, 1663. Its administration had been disastrous for its promoters and unprofitable for the colony. Louis and his minister saw clearly that a change was essential. They were the more convinced of this, in that disputes and dissensions were rife at Quebec between D'Avaugour the governor and Laval the bishop. It was decided to establish civil government in the colony in accordance with the system that had long been in operation in the provinces of the kingdom of France. Accordingly, by Royal Edict, the Sovereign Council of Quebec was established in April, 1663. *

The preamble of the edict refers to the retrocession to the king made by the Company of New France and emphasises the importance of providing for the establishment of justice in the colony. It then recites that the great distance separating the colony from France frequently interfered with prompt and diligent attention to colonial matters; the condition of affairs being usually altered by the time his Majesty's orders were received. The king was therefore of opinion that a Sovereign Council should be

* Edits et Ordonnances, I. 37.

established in the country to maintain the laws, to protect good citizens and to punish persons who were evil disposed. It was enacted that the council should have its seat in Quebec, but elsewhere if occasion required. The first council consisted of de Mézy the governor representing the King, de Laval, Bishop de Petrée, and five others to be chosen by the governor and bishop and changed or continued from year to year. No mention is made in this edict of an Intendant. It was also provided that there should be a procureur or attorney to the council. The powers granted to the Sovereign Council were in the following terms :—

“ Donnons et attribuons le pouvoir de connaître de toutes
“ causes civiles et criminelles, pour juger souverainement
“ et en dernier ressort selon les lois et ordonnances de
“ notre royaume, et y procéder autant qu'il se pourra en la
“ forme et manière qui se pratique et se garde dans le ressort
“ de notre cour de parlement de Paris, nous réservant néan-
“ moins, selon notre pouvoir souverain, de changer, réformer
“ et amplifier les dites lois et ordonnances, d'y déroger, de
“ les abolir, d'en faire de nouvelles, ou tels réglemens, ou
“ statuts et constitutions que nous verront être plus utiles à
“ notre service et au bien de nos sujets du dit pays.

“ Voulons, entendons et nous plaît, que dans le dit con-
“ seil il soit ordonné de la dépense des deniers publics, et
“ disposé de la traite des pelleteries avec les sauvages, en-
“ semble de tout le trafic que les habitants pourront faire
“ avec les marchands de ce royaume ; même qu'il y soit
“ réglé de toutes les affaires de police, publiques et parti-
“ culières de tout le pays, au lieu, jour et heure qui seront

“ désignés a cet effet : en outre donnons pouvoir au dit conseil de commettre à Québec, à Montréal, aux Trois Rivières, et en tous autres lieux, au temps et en la manière qu'ils jugeront nécessaire, des personnes qui jugent en première instance, sans chicane et longueur de procédures, des différends procès, qui y pourront survenir entre les particuliers ; de nommer tels greffiers, notaires et tabellions, sergents, autres officiers de justice qu'ils jugeront à propos, notre désir étant d'ôter autant qu'il se pourra toute chicane dans le dit pays de la Nouvelle-France afin que prompte et brève justice y soit rendue.

“ Et d'autant que pour la conservation des minutes, des arrêts, jugements et autres actes ou expéditions du conseil, il sera besoin d'un greffier ou secrétaire, voulons semblablement qu'il soit commis telle personne qui sera avisé bon être par les dits sieurs gouverneur, évêque, ou premier ecclésiastique qui y sera, pour faire la fonction de Greffier ou Secrétaire, laquelle sera pareillement changée ou continuée, selon qu'il sera estimé à propos par les dits sieurs susnommés.

“ Voulons de plus que les cinq conseillers choisis par les dits gouverneur, évêque, ou premier ecclésiastique, soient commis pour terminer les procès et affaires de peu de conséquence, et pour avoir l'oeil et tenir la main à l'exécution des choses jugées au dit conseil, afin que les dits commissaires prennent une connoissance plus particulière des affaires qui devront être proposées en icelui, en y rapportant tant celles dont ils pourront être chargés par les Syndics des habitations du dit pays ; habitants d'icelui, étrangers,

“ passagers et autres auxquels nous voulons et entendons
“ que prompte et brève justice soit rendue ; et pour jouir des
“ dites charges par ceux qui en seront pourvus, aux hon-
“ neurs, pouvoir, autorités, prééminences, privilèges et liberté
“ aux dites charges appartenants, et aux gages qui leur
“ seront ordonnés par l'état que nous et feront expédier,
“ sans que les officiers du dit conseil souverain puissent
“ exercer autres offices, avoir gages ni recevoir présents, ou
“ pension de qui que ce soit que ceux qui leur seront par
“ nous ordonnés, sans notre permission.

“ Si donnons en mandement aux Sieurs De Mezy gou-
“ verneur, De Laval évêque de Petrée ou premier prêtre
“ qui sera sur les lieux, que notre présent édit ils aient à
“ exécuter et faire exécuter, pour le choix par eux fait des
“ dits conseillers, notre procureur et greffier, et iceux assem-
“ blés, le faire publier et enrégistrer de point en point selon
“ sa forme et teneur, et le contenu en icelui faire garder et
“ observer, nonobstant tous empêchements, oppositions ou
“ appellations quelconques, dont si aucuns interviennent nous
“ nous en sommes réservés la connaissance, et icelle renvoyée
“ et renvoyons au dit conseil de la Nouvelle-France, et a
“ cet effet interdite et défendue à toutes nos autres cours et
“ juges ; et parceque du dit présent édit l'on pourra avoir
“ besoin en plusieurs et divers endroits du dit pays :
“ Voulons qu'aux copies collationnées par le greffier du dit
“ conseil souverain foi soit ajoutée comme a l'original,
“ scellés néanmoins du cachet de nos armes, ainsi que toutes
“ les autres expéditions qui seront décernées par le dit con-
“ seil. Mandons en outre à tous justiciers, officiers, habitants

“ du dit pays, passagers et autres de déférer et obéir aux
“ arrêts qui seront rendus par notre dit conseil souverain
“ sans difficulté.”*

An Arrêt of date June 5th, 1675, confirmed the edict which created the Sovereign Council, and increased the number of the councillors to seven. The king himself named these instead of allowing the bishop and governor to do so as formerly. The king also declared his intention of sending to New France an Intendant of Justice, Police and Finance. The grand vicar was authorized to take the bishop's place in the council, in the absence of the bishop from the country; and the intendant was declared to have the third place in the council, and to fulfil the same functions as the first president of the courts in France. He accordingly presided at the sessions, recorded the votes, pronounced judgments and convoked special meetings†; although the presidency was a matter of violent dispute between Frontenac and Duchesneau. Notwithstanding the arrêt Duchesneau's commission authorized him to preside only in the absence of the governor. The king finally decided that the arrêt should prevail.

By another arrêt dated June 16, 1703, the king added five to the number of the council thus making it twelve. Among these was now added “un conseiller clerc, lequel étant toujours en fonctions, sera plus instruit et plus a portée de veiller à la conservation des droits de l'Eglise, soit en la présence du dit sieur évêque, soit en son absence, pendant

*Ibid.

†Ibid I., p. 83.

laquelle le dit grand vicaire, peu instruit des lois et des usages du dit conseil, ne pourrait pas donner ses soins avec le même succès qu'un conseiller clerc." *

The council was also enjoined to administer justice "en la forme portée par les ordonnances de notre royaume, et jouir les dits conseillers, tant laïque que clerc, des mêmes droits et préséances entre eux dont jouissent les conseillers de notre cour de parlement de Paris, et des gages et pensions à eux attribués."

One year later 18th June, 1704 the king being informed that the methods of procedure followed in France were not observed in the colony, issued another ordinance by which he required, for the future, that in causes submitted to the council the attorney general must announce his pretensions "de vive voix" and that thereafter the president and judges must rise and deliberate together so that the attorney general should not become aware of their opinions; also that in cases submitted in writing, the attorney-general must reduce his opinions to writing; upon which issue would be joined. The judges were required to read the pleadings before pronouncing judgment but the attorney general had to retire during the delivery of the judgment. The king also ordered that "si dans les procès par écrit où il s'agira d'affaires graves le dit procureur général demande d'être entendu, il lui sera permis d'entrer dans la chambre du conseil et d'y donner ses conclusions de vive voix; mais qu'aussitôt après les avoir données il se retirera et les juges opineront sans qu'il soit présent." †

* Ibid. p. 299.

† Ibid, p. 301.

Finally, in 1742, the Governor and Intendant were authorized to name four "assessors" or commissioners, for the purpose of determining questions of fact. In cases in which they had not acted as commissioners, they were authorized to sit to complete the required number of Judges.*

Although the appointment of councillors was at first nominally made by the Governor and the Bishop jointly, yet as the former knew nobody in the colony, the councillors were actually named by de Laval. The first council consisted of Jean Bourdon, attorney-general; Rouer de Villeray, Juchereau de la Ferté, Racette d'Auteuil, Le Gardeur de Tilly and Matthieu Damours, councillors, and Peuvret de Mesnu, secretary. A royal commissioner, one Gaudais Dupont, instructed to inquire into the state of the colony, and to take possession in the name of the king of the entire colony, which had been abandoned by the company, also sat with the council as substitute for the Intendant who had not yet arrived.†

Although large administrative powers were thus granted to the Sovereign Council, the king by no means abandoned administrative control over governor, intendant, council and colony, as many an edict from the king's council of state testified. The name of the council itself was changed to Superior Council in 1703.

The Sovereign Council was thus constituted a court, with criminal and civil jurisdiction, the procedure of the Parliament of Paris being followed. It was also a board of trade finance, and public order, and could name local judges and court officials. A perusal of the published volumes of its

* Ibid p. 561.

† Parkman, Old Regime, p. 136.

deliberations shows that the council's labours were largely judicial ; at first as a court of original jurisdiction ; later as a court of appeal. It had no powers with regard to public policy ; it could not decide as to whether trade should be free to follow all markets ; it could not establish a mint or currency ; it was required to adjudicate according to the laws and ordinances of the kingdom, which the king alone could change.

The edict which constituted the Sovereign Council reveals to us the administrative system under which Canada was governed from 1663, until the close of the French régime. If we wish to learn how New France was governed we must therefore study the records of the Sovereign Council, which not only enregistered its own decrees but those of the king of France ; we must not omit of course the separate jurisdiction of the intendants, shown by the numerous ordinances that have been preserved. This system possessed all the essential features which characterized the administration of provinces in France. The government of provinces had long been held by the high nobles, often kindred to the Crown. Close beside them was the intendant, an obscure figure lost amid the vain glories of the feudal sunset, but in the name of the King holding the reins of government, a check and a spy on his gorgeously colleague.*

In the Sovereign Council of New France the Governor, Bishop and Intendant are the prominent figures. The exact jurisdiction of each of these dignitaries is not always scrupulously preserved by them. In particular, the Governor seems

*Parkman. Old Régime, p. 265.

to have complained of infringements by the Bishop and the Intendant. D'Avaugour and De Mezy engaged in warm controversies with Laval. Frontenac furiously disputed points of precedence and authority with the Intendant Duchesneau and later with Champigny.

The Governor was usually a military noble : in most cases bearing a title and sometimes of high rank. The scope of his nominal powers may be seen by a reference to the commissions of Montmagny, de Lauson, de Courcelles and others.* His official title was Governor and Lieutenant-general of the King. He commanded the troops, conducted negotiations with foreign colonies and tribes, possessed authority to punish delinquents to the extent of condemnation to death, " le tout souverainement et sans appel."

Although the nominal powers of the Governor were great, they were enhanced far beyond what a provincial governor in France ever dreamed of, by reason of the great distance which separated him from his master the king. If he abused his position, the only remedy was by appeal to the court at Paris. The Intendant who constantly watched the Governor and wrote voluminous secret reports of the condition of affairs in the colony, certainly acted as a kind of check, but the governor also availed himself of the privilege of putting the result of his observations in writing, for his own defence and in criticism of his colleague in the council

On the other hand, notwithstanding the ample powers accorded by his commission and incident to the distant scene of his labours, the Governor was constantly in receipt of des-

*Edits et Ord., Vol. III.

patches from the court exhorting, commanding and not infrequently reprimanding him.*

Judging solely by the terms of his commission, the Intendant was the real ruling power in the Colony. Contrary to what historians have frequently stated, no provision was made for the appointment of an Intendant in the edict creating the Sovereign Council; and no Intendant seems to have exercised his office in New France until Talon arrived in 1665. His official title was Intendant of Justice, Police† and Finance. He was commissioned to hear the complaints that were made by the colonists or the soldiers, by reason of any wrong doing or violence, to render sound and speedy justice and to proceed against the guilty until final judgment and execution. The Intendants were further commissioned "juger souverainement seul en matières civiles, et de tout ordonner ainsi que vous verrez être juste et à propos, validant des à présent comme pour lors, les jugements qui seront ainsi par vous rendus, tout ainsi que s'ils étaient

**Governors of Canada under the Old Regime.*

1540, Jean François de la Roque, Sieur de Roberval. 1598, Marquis de la Roche. 1612, Samuel de Champlain. 1615, Marc Antoine de Bras de fer de Chateaufort. 1636, Chevalier de Montmagny. 1648 and 1657, Chevalier d'Aillebout de Coulonge. 1651, Jean de Lauzon. 1656, Charles de Lauzon Charny. 1658, Viscount de Voyer d'Argenson. 1661, Baron du Bois d'Avaugour. 1663, Chevalier de Saffray Mesy. 1663, Alex. de Proville Tracy. 1665, Chevalier de Courcelles. 1672 and 1689, Count de Frontenac. 1682, Sieur de la Barre. 1685, Marquis de Denonville. 1699, Chevalier de Callieres. 1702, Marquis de Vaudreuil. 1726, Marquis de Beauharnois. 1747, Count de Galissonnière. 1749, Marquis de la Jonquière. 1752, Marquis du Quesne de Menneville. 1755, Marquis de Vaudreuil Cavagnal.

†Not the modern word, needless to say. "Police" signified good order, the public peace of the community.

émanés de nos cours souveraines, nonobstant toutes recusations.†

The Intendant, speaking generally, was at the head of civil administration, being usually selected from the *gens de robe*, while the governor, as a military noble, commanded the war expeditions. The governor, however, participated in civil administration also, and was held accountable for the general welfare of the colony. The two officials were usually jealous of each other to a degree. Indeed it was not deemed politic by the authorities at Paris that the governor and Intendant should be too friendly. It was thought that as checks upon each other they tended to promote each other's efficiency. Accusations of wrongful participation in the profits of trading were at all periods common, and certainly, if Bigot, the last of the Intendants, and the founder of La Friponne, was in any way typical of his class, Canada was by the cession most happily released from a corrupt, venal and impoverishing domination.

The powers of the Intendant were sometimes modified by special instructions, but the records show that the scope of his sway was always very great. Volume two of our Edits and Ordonnances preserves a large number of the Intendants Ordinances. They relate to a great variety of subjects :—the habitants were forbidden to place traps on their lands ; they are ordered to erect fences ; regulations respecting negros and slaves are made ; pigs were not allowed to wander through the streets ; the order of precedence in church was established to be that laid down by the Sovereign Council ; the habitants

†Edits et Ordonnances II. p. 39.

were forbidden to gallop their horses and carriages on leaving church ; missionaries were authorized to receive and execute wills ; a lengthy and elaborate ordinance was issued respecting the building of houses ; this was supplemented by another ordinance requiring builders to take their alignment from the Grand Voyer or road surveyor ; regulations against fire were made ; against nuisances ; children and grown persons were forbidden to slide in any manner on the different hills in the city of Quebec ; " ce qui expose les passantes à des accidents " ; weights and measures, the value of coinage, the building of churches, the observance of Sunday, the preservation of timber, seigniorial rights, the settlement of boundaries and many other matters were determined by the Intendant. He presided at meetings of merchants and traders held for the election of a syndic ; determined the limits of private lands ; issued instructions to the neighborhood for the repair or construction of a road ; required the habitants to exhibit their titles upon occasion ; forbade those who dwelt on farms to visit the cities without special permission, and punished all violations of his ordinances.

De Tocqueville says that the Canadian Intendant had much greater power than the French Intendant. As to the power of the latter we have the testimony of the great financier Law, that France was really governed by its thirty intendants. " You have neither parliament nor estates, nor governors," he declared to the Marquis d'Argenson " nothing " but thirty masters of requests, on whom, as far as the provinces are concerned, welfare or misery, plenty or want, " entirely depend." " The substantial government," says the

acute De Tocqueville, as the result of his own observations and enquiry, ' was in the hands of the intendant. That functionary was not of noble extraction. He was invariably a stranger to the province : a young man with his fortune to make. He obtained his office, neither by purchase, election nor inheritance ; he was elected by the government from among the inferior members of the council of state, holding office during good behaviour. While in the province he represented that body, and was hence styled the absent commissioner (*commissaire d'eparti*). His powers were scarcely less than those of the council itself, though his decisions were subject to appeal. Like the council he held administrative and judicial authority ; he corresponded with ministers ; he was in his province the sole instrument of the will of government."

The Intendants of New France seem to have been selected with admirable judgment for their trained intelligence and executive talent. A part of Canadian history to which surprisingly little attention has been given, is that which discloses the personal characteristics, the administrative acts and ordinances of these busy and most expert officials. Their influence upon the daily life of the colonists and indeed upon the general condition of the colony, was vastly more extensive and permanent than that which was exercised by the governors themselves. Francois Bigot, it is true, the last and worst of the intendants, stands pilloried in the pages of Parkman, William Kirby, and the annals of his time, as a thief ; but Talon, Duchesneau, Hocquart, Dupuy, and others, share with Frontenac, Galissionière, and Vau-

dreuil the approval of posterity for faithful public service.* As an instance of Talon's sagacity I cite his "Projets de Reglemens" enregistered by the Sovereign Council 24 January, 1667.* His rebukes of the excessive litigiousness of the early Norman and Breton settlers; his suggestion for the determination of disputes by friendly arbitration (*composition a l'amiable*); his organisation of a judicial system; of farming communities in the vicinity of the city of Quebec for the development of agriculture; his arrangements for the settlement of the Carignan-Salière regiment are all embodied in a state paper exhibiting rare intelligence.

The Intendants' ordinances are not only valuable as indicating the characteristics of their authors, but also disclose the condition of the colony at the time the ordinances were issued. A number of general rules akin to modern municipal regulations were drawn up by the Intendant Duchesneau and were approved by the Council subject to the king's ratification. These regulations are forty-two in number and relate to markets, regrators and forestallers, weights and measures, sanitation, fire, butchers, innkeepers, bakers, shipping, pasturage, alignments, commerce with the Indians and a variety of matters. Land surveyors were commanded to keep their compasses (*boussoles*) and instruments in continuously correct condition by placing them

**Intendants of Canada under the Old Regime.*

1663, M. Robert. 1665, Jean Talon. 1668, Claude de Bouteroue. 1675, Jacques Duchesneau. 1682, Jacques de Meules. 1686, Jean Bochart de Champigny. 1702, Francois de Beauharnois. 1705, Jacques Raudot, père, M. Raudot, fils, en l'absence de M. Raudot son père. 1710, Claude Michel Begon. 1725, Thomas Claude Dupuy. 1731, Gilles Hocquart. 1748, Francois Bigot.

*Edits et Ordonnances II, 29.

before "Martin Boutet, professeur es mathematiques, pour être par lui égalés". Penal enactments were also framed against domestics deserting employment, against idlers, beggars and evil doers; and the terrible edict against swearers and blasphemers was reproduced.*

In 1706, Raudot, whose ordinances excel all others in their restrictive and paternal character, published thirteen regulations in which the price of bread and meat was fixed and the ever-recurring danger from fire dealt with. The habitants are enjoined to keep their horses enclosed and are forbidden to allow them to go to water unconducted; to refrain from wrangling and quarreling at the church doors, and to desist from vending their farm produce otherwise than in open market until after 9 o'clock in the morning in summer, and one hour later in winter.

Raudot visited Montreal in 1706, and made some attempt to improve the frightful condition of the streets, by regulations for their grading and alignment. It is interesting to a Montrealer, to find mention in these ordinances of the old streets Notre Dame, St. Pierre, St. Francois and St. Gabriel, so familiar to us. All fines collected for refraction of his regulations were devoted to street improvements, and provision was made for the election of four "bourgeois"—prototypes of our modern aldermen—who were elected by the citizens on the first of January annually, to superintend and decide upon these improvements and to audit the accounts. †

Claude Thomas Dupuy published in June 1727, an ordinance enjoining the inhabitants of the cities and towns to

*Edits et Ordonnances II. p. 65.

†Ibid p. 258.

construct their dwellings and stores, of stone. It contains twenty-one articles, and in quaint and most interesting and able fashion discourses upon the defects of the buildings that had customarily been constructed, and the advantages of more permanent structures.*

The Sovereign Council itself was occupied with a great variety of matters. Complaints were brought before it, at its regular weekly sessions, by the procureur-general. Although the highest court of appeal, it exercised at first original jurisdiction in very trivial cases. Between 1663 and 1673, may be seen in the *Régistres du Conseil Supérieur* a multitude of judgments on matters great and small; from murder, rape and infanticide, down to petty nuisances, misbehaviour of servants, and disputes about the price of a sow. Among decisions of more or less weighty moment, I select the following from the second volume of *Edits et Ordonnances* as showing something of the labours achieved by this Council so notable and interesting in the annals of the province.

1663. 20th September. Arrêt ordering a meeting of four habitants of the city to proceed in presence of the Council to the election of a mayor and two aldermen.

6th October. Acceptance by Jean Baptiste Legardeur, Ecuier, Sieur de Repentigny, of the office of Mayor and of Jean Madri and Claude Charron, elected aldermen. On the 10th October, the mayor and aldermen elect appear before the Council, and take oath for the faithful performance of their duties, but under date the 14th of the following month we meet with another arrêt which annulled their election.

*Ibid II. p. 317.

1664, 30th June. Arrêt establishing a tariff on merchandise and liquors imported from France.

1664, 3rd November. Arrêt ordering the election of a syndic by the inhabitants of Three Rivers before the judge of that place.

1667, 10th January. Permission granted to all the inhabitants of Quebec to assemble before the intendant to elect a syndic.

1667, 29th March. The syndic elected by the inhabitants of Quebec takes oath of office

1669, 19th March. Arrêt which obliges merchants to take wheat from their debtors in payment.

1673, 11th September. Arrêt legitimising the children of Pierre Picher and Catherine Durand.

1674, 4th December. Arrêt forbidding tanners to take shoemakers into their employ.

1681, 26th August. Arrêt calling the judges of Cote Beupré and de Lauzon to take the places of several judges who have been removed.

1682, 12th January. Arrêt that persons who compose the Council will abstain from adjudicating on any matter civil or criminal, in which their ascendants, descendants or other relatives are interested.

1683, 13th January. Arrêt regulating the value of *piastres*.

1683, 1st February. Arrêt regulating foreign merchants and restricting their rights ; and forbidding public begging.

1685, 30th August. Arrêt of enregistration of the king's decision annulling the decision of the council of 16th August, 1684, forbidding council to make police regulations in the governor's absence.

1686, 4th February. Arrêt establishing a regulation in accordance with a meeting of the inhabitants of Quebec, concerning police for supervision of bakers, waggoners, butchers and nuisances.

1688, 4th January. Arrêt that a meeting of inhabitants be called, to ascertain the price of bread, and to advise as to means for improving the condition of the colony.

This list might be greatly extended but suffices to show with what matters the council concerned itself. The legislature of our province, with commendable desire to preserve the records of the past, has undertaken to publish the judgments and deliberations of the Sovereign Council. Thus far six volumes have appeared. The historical introduction by the late Hon. A. J. Chauveau which prefaces the first volume, is itself a valuable contribution to our literature. It is earnestly to be desired that the efforts of the legislature will not be relaxed until the whole of these most valuable and interesting archives are made accessible to the general reader and student ; for nowhere else are the characteristics of the Old Régime so clearly revealed. In these pages we see the council actually at work—the governor, the bishop, the intendant, the attorney general and the councillors.

VI

Administration of Justice—Different sources of Authority—The Senéchaussé, Prévôté, Maréchaussé and Admirauté—Officials—Seigneurial System—Contume de Paris—Ordinance of 1667—The Criminal Law.

The judicial organization of colonies is seldom simple ; and that of Canada under the Old Regime was specially complicated. There were various fountains of authority ; concurrent jurisdictions that were successively established or permitted to grow up with ill-defined limitations or distinctions. Justice was active in the colony and her servants were numerous and of all degrees of rank. First, there was the King, with his edicts and supreme authority ; then came the Sovereign Council, which, from 1663, often sat as a court for the trial of disputes and criminal offences ; the Governor himself frequently exerted a personal jurisdiction, while the Intendant undoubtedly wielded a larger and more constant individual authority than any other official. In addition to these, there was the Royal Justice, with Judges named or approved by the king, having jurisdiction in Quebec, Montreal and Three Rivers ; and there was also the seigniorial justice administered by the seigneurs, and classified as High, Middle, and Low justice, according to the gravity and importance of the matters involved.

Champlain was empowered to commission "des officiers pour la distribution de la justice et entretien de la police réglement

et ordonnances, jusqu'à ce que par nous autrement en ait été pourvu," and we learn that he appointed (the first judicial officers appointed in the colony) a lieutenant du prévôté, a procureur de roi, and a greffier. This triple form of organization existed up to the conquest. Under the Company of New France, in 1651, a grand seneschal was appointed for the whole country. There are records of this office in 1640, but it was then under the direct control of the governor. The grand seneschal's court and jurisdiction lasted until the constitution of the Sovereign Council in 1663. In March, 1663, we learn from an arrêt that the Council appointed a judge, procureur-general, and a greffier, to the Senéchaussé of Montreal; which shows that the name, at least, was continued for some time afterwards.

The king's edict gave power to the Sovereign Council to hear and adjudicate upon all cases, as a court of final resort. The Council was also authorized to appoint local judges who would dispense private justice "sans chicane et longueur de procédures." These powers were thus exercised until 1677, in which year the king re-established the Prévôté de Québec.* The court had previously existed as a court of original jurisdiction, but had been suppressed in favour of the Council. This change interfered with the settlement of seizures, matters affecting immovables and other suits which the Council could not effectively or promptly decide. The Prévôté was therefore re-established and the Council became a court of appeal. The king was constantly represented in the Prévôté by a procureur: the judge

* Edits et Ordonnances, I, p. 90.

was described as a lieutenant-general, and there was also a greffier or clerk attached to the court. These were the officials who also constituted the courts at Three Rivers and Montreal, under the Royal Justice.

The Senéchaussê and Prévôté were not the only judicial models introduced from France. On the 9th May, 1677, Louis XV established the Prévôté de la Maréchaussée in Canada.* The Maréchaussée, or court of the jurisdiction of the Marshals of France, were a sort of mounted police. In France these troops acted under the orders of the intendants, and were employed to meet all sudden outbreaks, arrest mendicants, and crush the riots that the price of food constantly excited. The king's object, as described by the edict, was the detection, discovery and punishment of crimes committed by "des gens sans aveu et vagabonds." This being, in the language of the Edict, the duty in the first instance of the Prévôté of "our cousins the Marshals of France." Six cōstables were attached to the Maréchaussée "pour executer ses ordonnances et décrets et lui prêter main forte quand besoin sera."

There were disputes and contentions as to jurisdiction between the officials of the Prévôté of Québec and those of the Maréchaussée. These were finally regulated by Edict†, which gave precedence to the former.

The last special jurisdiction established in the colony was that of the Admiralty of Quebec, constituted by letters patent 12th January 1717: It administered affairs of Marine in accordance with the ordinance of 1681. The restrictions upon commerce, the regulations requiring permits to leave

* Edits et Ordonnances, I p. 90.

† Edits et Ordonnances, I p. 236.

the colony or to ship goods to France, the registration of incoming and out-going vessels and like matters, were enforced by this court, from whose decisions however, an appeal to the Council was permitted.

Mr. Lareau commenting with some bitterness upon the ultra-paternal surveillance which marked the attitude of France towards Canada, remarks that not even barbers could exercise their calling without the king's diploma. And whether with intentional irony or not, the compilers of the third volume of our *Edits et Ordonnances* have inserted first among the commissions of various civil and judicial officials, the letters patent granted by "Francois de Barnoin, king's councillor, and his Majesty's chief Barber and Surgeon, keeper of the Charters, Statutes, Privileges, and Royal Decrees, made from all antiquity on the art and status of chief Barber and Surgeon, throughout the kingdom of France" to Jean Madry of the city of Quebec, Canada, the said de Barnoin being desirous of granting some mark of distinction to Madry, by reason of the latter's capacity and experience in the barbers' art, and the excellent services that he daily renders to His Majesty's subjects in the colony!

The same volume contains the commissions of a juge-prevot, a procureur-fiscal and a Lieutenant Civil and Criminel (1666), for Quebec appointed by The West India Company; a Notary (1675), a Grand voyer (1689), a prevôt for the Marechaussé (1714), a lieutenant-general of Admiralty (1717), a Chief Precentor (Grand Chantre) for the church at Quebec (1722), a Procureur du Roi for Montreal (1747), keeper of the Seal of the Council, a Clerical Coun-

cillor, a Greffier for the prévôté at Quebec—all appointed by the King of France.

The Seigneurs, with their limited administrative judicial powers, were the exponents of that Feudalism which was first sanctioned by Richelieu in the charter to the Hundred Associates. The age could not conceive of a condition of society without ranks and gradation of classes. Needless to say, feudalism in Canada did not grow out of the social conditions of the people, but was super-imposed. Nor was the essential feature of old-world feudalism, the obligation of military service by the vassal to his lord or seigneur, ever reproduced in the colony. There was an immense difference between the jealous combative feudal baron of France or England, and the unresisting seigneur of Canada who was subject to the king's decree, the council's edict, and the intendant's ordinance. The distinctive feature of his tenure was, the obligation of clearing his land on pain of forfeiture. But as he was forbidden to sell uncleared land, he contrived to hand it to the cultivator in consideration of a small perpetual rent or other charges. Such a cultivator was known as a *Censitaire* and his tenure as *en censive*. Custom generally determined the nature of the agreements between seigneurs and censitaires. To grind his grain at the seigneur's mill, to take his bread at his oven, to work for him one or more days in the year, to give him one fish in every eleven for the privilege of fishing in the river before his farm, these were the kind of conditions exacted.* Frequently however the intendant interfered. Another feature of the system was that of *lods et ventes* or mutation fees ; if the censitaire sold

his land (as he might) the seigneur received one-twelfth of the purchase money and if the seigneur sold, he was obliged to pay a fifth of the price to his feudal superior. This system was not abolished until 1854.

Most of the seigniories of Canada were simple fiefs, but among the exceptions may be mentioned the Barony of Des Islets granted to the Intendant Talon in 1671, the earldom of St. Laurent on the isle of Orleans, the Barony of Portneuf in 1681 to René Robineau and the Barony of Longueuil which dates from 1700, granted to Charles Le Moyne.

Justice was administered by the seigneurs on very rare occasions, and "*la haute justice*" which included crimes punishable with death was never administered. This attribution of judicial authority was rather an appanage of the ancient feudal system borrowed from France than a serious function of the seigneur's rank.

At Montreal, prior to the establishment of royal justice there in March, 1693, the seminary of St. Sulpice administered Seigneurial justice "*haute, moyenne et basse*." It was admitted that considerable revenues were derived by the seminary from this administration, but the only compensation offered by the king was the privilege of naming the first judge and the greffiers, in perpetuity.

The Sovereign Council was empowered to administer justice, but this was required to be done according to the laws and ordinances of the kingdom of France. These comprised, apart from the edicts that were promulgated from time to time, for special circumstances, two great bodies of written law known as the Coutume de Paris, and the Ordinance of 1667. The

Coutume de Paris was the fundamental law of the colony. It was invoked and observed by the Hundred Associates, and continued in force until the promulgation of our Civil Code in 1865. A number of articles, however, in the original Coutume were never in force in the colony. In re-establishing the French laws by the Imperial Act of 1774, the British authorities recognized the Coutume de Paris as having been the law of the country prior to the Conquest. It dealt with civil rights and also with criminal matters. It undoubtedly is worthy of all the pre-eminence which jurists have given it as a body of customary law, notwithstanding its obscurity in parts and its lack of methodical arrangement.

The Ordinance of 1667 is the basis of our present Code of Civil Procedure ; needless to say, the detailed surveillance of judges no longer exist.*

It was compiled at the instance of Colbert, with great care and ceremony ; the leading jurists of France being called to the task. It may be read in its complete form in the first volume of our *Edits et Ordonnances* (p. 106) with the annotations and suggestions of the intendant Duchesneau respecting certain of its provisions. The Ordinance, with the modifications suggested by the intendant and approved by

† Titre I. Article viii. Declérons tous arrêts et jugements qui seront donnés contre la disposition de nos ordonnances edits et declarations nuls, et de nul effet et valeur ; et les juges qui les auront rendus responsable des dommages et intérêts des parties, ainsi qu'il sera par nous avisé.

Titre xvi. Art. xi. Ne sera pris les juges et consuls aucunes epices salaires, droit de rapport, et de conseil même, pour les interrogatoires et audition de témoins ou autrement, en quelque cas, ou pour quelque cause que ce soit, à peine de concussion et de restitution du quadruple

the king, came into force in Canada in 1678. The minutes of the Sovereign Council disclose as the reasons for the modifications (which relate chiefly to delays on summons, fines for dereliction from duty, etc,) the following: the poverty of the inhabitants, the difficulties of traveling in certain seasons, the lack of experience of the majority of judges, the want of capacity of the huissiers, and the desirability of preventing the habitants from incurring heavy costs through ignorance, there being no advocates or councillors in the country.

The criminal law in Canada under the Old Regime presents, so far as it can be traced, the same harshness and extreme severity that, until a very recent period, have marked the penal laws of all Christendom. It took many years to teach those in judicial and legislative authority that public order was best ensured by the certainty rather than the severity of punishment.

The king's commissions to the early explorers and governors empowered them to administer justice according to the laws and ordinances of the kingdom, to punish delinquents even with death. Like powers were exercised by the Sovereign Council and the records of their deliberations, droll and singular in many details, show that the sword of justice was then very keen and punished wrong-doing with terrible severity. The rope for hanging, the lash, the branding iron, the torch, the iron collar, the pillory were among the means of punishment; but there are instances in which the imagination seems to have taxed itself to devise the most horrible cruelty.

On the 2nd June 1667, a man convicted of theft was condemned to be hanged until dead ; his accomplice to be conducted to the foot of the gallows to witness the execution, thereafter to be beaten with rods by the executioner on the public square in Quebec.

On the 23rd April, 1666, the Council dismissed the appeal of a prisoner condemned by the lieutenant-criminel to torture and death for the crime of murder. The Council ratified the sentence, according to which the prisoner was to be conducted to the door of the parish church at Quebec half-naked, a rope about his neck and a torch in his hand ; there, kneeling, to ask pardon for his sins of God, the King, and of Justice. This done, his hand was to be severed and fixed to a stake, and he was then to be hanged on the public gallows. On the 17th September, 1668, the Council condemned one guilty of rape to be shaved and beaten until the blood came, at the squares of the upper and lower town, and then to be transported to the galleys for nine years. On the 22nd July 1669, a murderer was condemned to be hanged and strangled and to have his hand severed and gibbeted on Cape Diamond.

There is sometimes a droll side to these offences, as when on the 1st December 1670, the Council decided an appeal by one Louis Gaboury from the sentence of the prévôté of the Isle of Orleans. Gaboury was convicted of having eaten meat during Lent without permission of the Church. He was condemned to be tied to a stake in public for three hours, thence to be conducted before the chapel door, where, bare-headed, with hands clasped on his knees, to crave pardon of God, the King and Justice for having eaten meat during Lent without permission of the Church. He was also condemned

to pay a fine of twenty livres and costs. The Council modified the sentence by exacting the fine only.

On the 4th February 1671, the Council issued a curious decree. One Paul Dupuy had said that there was nothing like looking after one's self, and that when the English cut off the head of Charles I. they did a good thing ; with other remarks to the same effect. This was condemned as sedition. He was condemned to be led in his shirt, torch in hand, to the chateau of St. Louis, there to beg pardon of the King ; thence to the pillory of the Lower Town to be branded with a fleur-de-lis on the cheek, and kept in the stocks for half an hour ; then to be led back to prison till the information against him was completed !

In 1670, Louis XIV promulgated his celebrated criminal ordinance, companion to the civil ordinance of 1667. It was enforced in the colony, and many of the decisions of the Council are based upon it.

It has doubtless been observed in the foregoing pages, that many of the king's edicts were enforced under pain of punishments that gave them all the reality of penal statutes. The king's edict against swearers and blasphemers, with its penalty of the loss of the upper lip by heated iron for a sixth offence, and the loss of a lower lip for a seventh oath, is historic. The habitants too, who indulged his passion for hunting the moose or beaver in forest glade, or running brook, for more than twenty-four hours, did so, said the king's edict, under pain of his life.

Canada was fortunate in escaping terrors like those of the dragonnades. Her peace, too, was never troubled by witches,

nor are her records stained as are the annals of Salem, by cruelties such as are depicted in Hawthorne's "House of the Seven Gables." Punishments for crime were far less wanton and arbitrary in the colony than in France, owing, doubtless to the intelligence and humanity of the governors and intendants, and the assuaging influence of the Church. No nucleus, however, of trial by jury, or of the principles which underlie Habeas Corpus are discernible, and the dictum of Chief Justice Johnston, that great as our obligations to the civil law of France as far as it reaches, we owe it nothing as respects the freedom of the press and the right of public discussion, is also true as regards personal freedom and general equality before the law—whatever we enjoy of these is due to the beneficent rule of England, and to the constitutional freedom which followed it, without which the early and heroic French colonists could never have dreamed of, nor their descendants ever have attained, the blessings of the liberty they now enjoy.*

The history of crime itself is scarcely more dreadful than that of the administration of criminal law, as we meet with it, not in old Canada alone, but in France, in Spain, in Italy, in Germany, and even in free England.

What fearful shrieks of pain echo to us down the long years !

What ghastly visions of blood and horror, sweep before us !

What cruel bondage, what unavailing prayers, what awful agony !

* M. L. R., Superior Court, ii. p. 488.

VII

Freedom from taxation—Parishes—Syndics—Grand Voyer—Corvées—Monnaie de Cartes—Public Meetings—The assembly of Three Estates—Resumé of meetings permitted.

Having now sketched, somewhat broadly, the documentary instruments of administration under the Old Régime, it remains for us to consider, within such limits as an academic treatise of restricted length will permit, some of the details that may be presumed to be of special interest to the student of to-day.

The colonists were fortunate in not being obliged to pay any direct Civil Tax, except where in a few instances temporary and local assessments were ordered. One-fourth of the beaver-skins and a tenth of the moose-hides were tributes due the king. A duty of ten per cent was also levied upon brandy, wine and tobacco. The farmers of the revenue also collected at Tadousac the furs brought by the tribes from the King's preserves, that wild and desolate region whose southern boundary extended from St Paul's Bay for eighty leagues* along the river shore, and whose northern limits were away towards Hudson Bay in the mountainous wilderness that to this day has lost but few of its primeval features.*

The division of the colony into Parishes was effected on 2nd March, 1722, by an edict of the Council of State, adopting a schedule drawn by Michel Begon, Intendant. By this edict, Canada was divided into what was called the Govern-

* Parkman, Old Régime, p. 322

ment of Quebec, with forty-one parishes, the Government of Three Rivers, with thirteen parishes, the Government of Montreal, with twenty-eight parishes. These parishes are all fully described by their boundaries. They were primarily ecclesiastical parishes, many of which had an anterior existence as such, but were for the first time recognized by civil authority in the edict of 1722. The beginnings of parishes may be traced to the *Habitations* or settlements of the colonists. The seigneur was the social head of these communities, administering justice among his censitaires in the absence of other jurisdiction ; receiving their fealty and homage, mutation-fines, and *rentes* ; and taking the place of the *syndics d'habitation*.

No other recognition of these parishes than that of the edict of 1722, was made by civil authority until the year 1831, when a commission by the Legislative Assembly was appointed to establish their limits for civil purposes. The Consolidated Statutes of Lower Canada embody still later legislation on this subject ; the ecclesiastical parish forming in most instances the actual boundaries of the civil parish. This illustrates the close connection which existed between the civil and religious administration of the colony. The restrictions against Huguenot immigration, the legal right to collect tithes from the colonists, and to obtain from them materials and labour necessary for the construction and repairs of churches in obedience to the intendant's order, are further illustrations of this intimate relation.

Occasional reference has been made to the *Syndics d'habitation*. There were a class of officials well known in France, and represented popular rights before the administrative tribunals. There are records of meetings of the

inhabitants of the three towns at different intervals for the election of these officials, but these democratic aspirations found no favour in the eyes of authority, and the office fell into desuetude. "You should suppress the office of Syndic," wrote Colbert to Frontenac, "who presents petitions in the name of the inhabitants, for it is well that each should speak for himself and not one for all."

The office of the Grand Voyer or Road Surveyor, though not a judicial office, was one of considerable administrative importance. He supervised the roads and bridges the line of streets, buildings in danger of collapse, and like matters. In 1688 René Robineau, sieur de Bécancourt, was named Grand Voyer. He had acted in this capacity since 1657 under the Hundred Associates. The office existed long after the conquest. In 1706 the Sovereign Council collected and promulgated a number of police regulations of which the eighth refers to the office of the Grand Voyer*. It is as follows :

"VIII. The Sieur de Bécancour, grand voyer, is hereby required to visit all the seigniories where main roads have not yet been established ; to establish such in concert with the proprietors of the seigneuries, or in their absence with the Captains of the Militia, unless there be a judge present and to decide, in accordance with the opinion of six of the oldest and most important residents of the place, where the roads shall henceforward traverse ; and such roads shall be at least twenty-four feet wide ; the Council commands the inhabitants of each such place, each for himself,

*Edits et Ordonnances, vol. II, p. 137.

to make the said roads serviceable and to give days of labour (journées de corvée) for this purpose wherever necessary ; to make bridges over brooks ; to fill in ditches where there are any, in accordance with the direction of the grand voyer conjointly with the seigneur, judge, officers of militia and the said six inhabitants ; we enjoin the said officers of militia to oversee the construction of the said roads and bridges and to command the inhabitants to that end ; also to make report to this Council, in the month of October next of the condition of said roads ; and in case of any dispute the Council reserves enquiry to itself, but forbids all persons to block up the said roads with fences or barriers under any pretence whatever, under pain of a fine of twenty livres, to be devoted to the fabrique of the parish of the Seigniory which fine the church-warden shall be bound to exact under pain of being himself personally liable therefor."

The Corvée, was the system whereby the seigneur or other landholder was entitled to a certain amount of manual labour from his tenants or censitaires, usually for the repairs of roads and bridges. It was introduced into Canada from France, and was provided for in the deeds of concession. De Tocqueville says that the plan of keeping roads in repair in France by *corvées* was first commenced towards the close of Louis xiv's reign, and the strange notion, that the cost of keeping the roads in repair ought to be borne by the poorest persons in the community and those who travel the least, took such root in the minds of those who were gainers by it, that they soon came to believe that no other system was feasible. In Canada the censitaire owed corvées to his

seigneur, and the intendant enforced the obligation by his ordinance. Ordinarily, the seigneur was not obliged to furnish tools or food, (*ni nourritures ni outils*). In 1716, Michel Begon, intendant, issued an order forbidding the insertion of the clause relating to *corvées* in future deeds of concession.* The system however had taken deep root, and remained till after the conquest. In 1791, Parliament, by special statute, sanctioned the system, permitting however a commutation of the duty of *corvées* by a money payment. This statute was the occasion of serious riots in Quebec and Montreal.

In the first deed of concession of the Island of Montreal the Company of New France stipulated that a grand royal road should be allowed for, twenty toises wide all round the Island, reckoning from the shore.

In 1733, a road was opened up between Quebec and Montreal. When the Grand Voyer failed to get the habitants to open up or keep the roads in repair, he reported to the intendant, whose mandate with its alternative penalties was usually effective.†

The insufficiency and instability of Currency was ever a source of financial embarrassment under the old régime. Such shipments of coin as were sent to the colony by the king, or were brought thither in the course of trade, persistently found their way back to France, in remittances to creditors there. Owing to the scarcity, wheat and beaver-skins were at one time sanctioned as legal tenders,‡ but were, of course, most

*Edits et Ord. II, p. 444.

†Edits et Ord. II. pp. 288, 341, 383.

‡Edits et Ord. II. pp. 47 and 55.

inconvenient for small transactions. To such straits was the intendant de Meulles driven, to provide for the payment of the Carignan regiment, that he issued acknowledgments written on playing cards which he ordered the people to accept as currency. This *monnaie de cartes* proved so great a relief to traders, that, at their instance, the government permitted a fresh issue, limited in quantity and redeemable every autumn by bills of exchange from France.

So long as the limitation and redemption of the card money was observed, it continued to be popular, but over-issue and the dishonouring of the bills of exchange eventually brought it into disrepute, and caused great distress to the colonists.

In the year 1717, petitions from impoverished traders, begging for the redemption of large quantities of this worthless currency, were sent to France. In answer, the king promised to redeem the cards at half their pretended value, announcing at the same time that he would permit but one more issue.* But such was the dearth of small currency, that twelve years later, the colonists, at their wit's end, begged for still another issue. Accordingly, a royal ordinance, permitted the issue of cards to the extent of 400,000 livres.† These, and kindred devices styled "ordinances," circulated by the intendants Hocquart and Bigot, were continued in use until the conquest. In its last bitter years, the colony floundered in drifts of worthless paper. After the capitulation the distress of the poor habitants who found themselves burdened with this worthless currency for which they had exchanged the products of their toil, was so great, that the British

*Ibid I. 370.

†Ibid. 522.

authorities insisted by a provision in the treaty of 1763, upon a redemption of the card money by France. Commissioners were appointed and redemption effected to the great relief and satisfaction of the colonists.

Frequent mention has been made by those who have commented on the Old Régime, of the rarity of Public Meetings in the colony. At a time when the colonists of New England held their town-meetings, and discussed matters of public interest, the colonists of New France were forbidden to assemble together with any degree of freedom. It is unjust to contrast our present liberty in the matters of public assemblies, whether representative or not, with the restrictions that prevailed in the seventeenth century in New France. But the comparison between the two colonies is fair. Even in Virginia, the first of the English settlements in America, public meetings were regarded as indigenous, and were freely convened and held.

It would be wrong, however, to suppose that public meetings were unknown under the Old Régime in Canada. They were, if not frequently yet occasionally held, for purposes more or less remotely connected with public administration, and show at least that the tendency of the French race in Canada as of all progressive communities, was on occasion of special moment at least, to assemble together for deliberation or remonstrance, or the formulation of requests.

These meetings, however, were as jealously restricted in the colony as in France, and no meeting of a parish could be convened until permission had been obtained, in express terms, from the intendant. When municipal officers were to be elected or public affairs discussed, the village bell summoned

poor and rich alike to the church door. There was no regular debate followed by a vote, tho all were free to speak. This semblance of liberty, however, concealed real impotence. No meeting, however unanimous, could impose a tax, or sell, or buy, or lease, or go to law, without permission from Council or Intendant. Louis and Colbert, we have seen, determined that even these meagre forms of democracy should be gradually suppressed. The sharp rebuke administered to Frontenac for assembling the three estates, and attempting to establish municipal institutions, seems to have been most effective in its influence upon his successors.

There is record of a meeting of the habitants with the Recollet fathers and Champlain, who presided, in the year 1616. The colony was in dire straits owing to lack of means, difficulties with the trading companies, and dangers from the Iroquois. It was agreed that the defences of the colony must be increased ; the establishment of a seminary for the education of Indian children was discussed, and Champlain was deputed to proceed to France to make known the condition of the colony to the king.

A similar movement among the colonists took place in 1621. The company of St. Malo and Rouen disputed with the new company formed by de Montmorenci concerning the monopoly of trade. It is said that at this time the colony was on the verge of civil war. A meeting of the principal colonists was held on the 18th August, and it was resolved to send a deputy to France, "*pour y représenter avec humilité, aux pieds du roi, la cahier du pays.*"

One of the first acts of the Sovereign Council was to convoke an assembly of citizens of Quebec for the purpose of

electing in the presence of the Council, a Mayor and two aldermen "qui auront le soin des affaires publiques de la ville et de son ressort." This was done at the instance of the Procureur-general, who reminded the Council that the office of syndic, filled by the choice of the people, "pour la conservation des droits de la communauté et intérêt public." had been suppressed by former governors.*

A mayor and two aldermen were accordingly elected in September, 1663, but in November following, these officials resigned their office and a syndic was elected in their stead.† The arrêt convoking a meeting of the inhabitants for this purpose discloses no signatures, and it is known that it was the occasion of a warm dispute between Mezy the governor and Laval which finally resulted in the recall of the former‡. Indeed this controversy is one of the most animated episodes of Canadian history. Mezy seems to have had a considerable measure of popular sympathy, but Laval was stronger at the court of France. The convocation of public meetings by Mezy was, besides, utterly repugnant to the young autocrat of France.

* Edits et Ordonnances, II. p. 6.

† Edits et Ordonnances II. p. 13.

‡ Repentigny was chosen Mayor, and Madry and Charron aldermen; but the choice was not agreeable to the bishop, and the three functionaries declined to act, influences having probably been brought to bear on them to that end. The Council now resolved that a mayor was needless, and the people were permitted to choose a syndic in his stead. These municipal elections were always so controlled by the authorities, that the element of liberty which they seemed to represent was little but a mockery. On the present occasion after an inaccountable delay of ten months twenty-two persons cast their votes in presence of the council and choice fell on Charron. The real question was whether the new syndic should belong to the governor or to the bishop. (Parkman Old Regime p. 152.)

Probably the most remarkable of the few public meetings that took place during the Old Régime were those that were convened by Frontenac in 1672. The story cannot be better told than in the words of Francis Parkman.

"At Quebec Frontenac convoked the council made them a speech and administered the oath of allegiance.* This did not satisfy him. He resolved that all Quebec should take the oath together. It was little but a pretext. Like many of his station Frontenac was not in full sympathy with the centralizing movement of their time, which tended to level ancient rights, privileges and prescriptions under the ponderous roller of the monarchical administration. He looked back with regret to the day when the three orders of the state, clergy, nobles, and commons, had a place and a power in the direction of national affairs. The three orders still subsisted in form, if not in substance, in some of the provinces of France, and Frontenac conceived the idea of reproducing them in Canada. He had no difficulty in forming his order of the clergy. The Jesuits and the seminary priests supplied material even more abundant than he wished. For the order of nobles he found three or four gentilshommes at Quebec and these he reinforced with a number of others. The third estate consisted of the merchants and citizens."

Having assembled these three estates with all the attendant pomp and circumstance possible, Frontenac delivered himself of a high-sounding, and doubtless sufficiently sincere address, upon the duty of the colonists to their king and country, and afterwards administered the oath of allegiance.

*Registre du Conseil Souverain.

Frontenac also applied himself to the work of giving municipal government to Quebec. He ordered the election of three aldermen the senior of which was to be mayor. One of the three was to retire annually, his place to be filled by a new election ; and the governor as lieutenant general of the King reserved the right to confirm or reject. He also, in conjunction with the chief inhabitants, framed regulations for the administration of a town destined, as he often declared to become the chief city of a mighty empire. Meetings were also to be held semi-annually as above explained. But Colbert shattered all these fine projects and democratic germs and wrote to the governor in the following characteristic words.

“L'assemblée et la division que vous avez faite de tous les habitants du pays en trois ordres ou états, pour leur faire prêter le serment de fidélité, pouvaient produire un bon effet dans ce-moment-la ; mais il est bon que vous observiez que, comme vous devez toujours suivre dans le gouvernement et la conduite de ce pays-là les formes qui se pratiquent ici, et que nos rois ont estimé du bien de leur service depuis longtemps, de ne point assembler les Etats généraux de leur royaume, pour peut-être anéantir insensiblement cette forme ancienne, vous ne devez aussi donner que très rarement, et pour mieux dire jamais, cette forme au corps des habitants du dit pays ; et il faudra même avec un peu de temps, et lorsque la colonie sera encore plus forte qu'elle n'est, supprimer insensiblement le syndic qui présente des requêtes au nom de tous les habitants, étant bon que chacun parle pour soi, et que personne ne parle pour tous.”

Of other meetings held at this time we note one held at Three Rivers by permission of the Council on November 3rd, 1664, for the election of a syndic. Not only was this special authorization essential, but it was also ordered that the meeting be held before the judge of Three Rivers and subject to the sanction of the local governor of that place. On the 24th January, 1667, the colonists were permitted to assemble for the purpose of electing a syndic to see that merchants sold their goods in accordance with the prices fixed by tariff, the meeting to be held before the civil lieutenant. A similar meeting was sanctioned by ordinance, dated 7th October, 1675, for the purpose of considering the imposts on various articles of commerce. This meeting was presided over by the Intendant. We next have record of an "assemblée des habitants" to consider violations of the regulations governing Bakers and Bread. In this arrêt (20th December 1677) is cited a previous Rule of the Council* which provided for two meetings to be held on the 15th November and the 15th April of every year, to which the chief inhabitants were invited, to consider and fix the price of bread, and generally, ways and means for developing the colony. Two councillors were to preside. This popular assembly however was short lived. The arrêt of 20th December, 1677, ordered the lieutenant-general to convoke one meeting "sans tirer à conséquence pour l'avenir." The hint seems to

* This was one of forty-two interesting municipal rules, collected from those framed by Mexy, Tracy, Frontenac and the intendants Talon and Bouteroue. Edits et Ordonnances vol. II. p 65.

have been faithfully taken, for these semi-annual meetings were thenceforward never heard of.

A somewhat remarkable arrêt was passed by the King on the 11th May, 1717, permitting the merchants and traders of Quebec and Montreal, in response to their urgent petition, to meet together every day in some convenient place to confer on matters of business.* The petition, as appears from the arrêt itself, set forth that commerce was the principal means by which the colony could grow and maintain itself, and that it could never flourish so long as traders (*négociants*) were not permitted to assemble together in the manner sanctioned in all the cities of France. Not only was this Exchange or Bourse allowed, but the traders were allowed to name one of their member through whom representations in regard to trade and commerce, were made to the Governor and Intendant.

In virtue of this arrêt a meeting of merchants and traders was held, in the presence of the intendant of course, on the 6th October, 1740, and one Desauniers was chosen as their representative. Whether or not other meetings or other elections had been held in the interval of twenty-three years, can only be surmised, as the records are silent on the subject.

*Edits et Ordonnances vol. I, p. 355.

VIII

Greek and Roman colonization contrasted with that of France in Canada—The solicitude of Louis XIV—Traces of the Old Régime—Freedom in France—Causes of the fall of New France—Concluding words.

There are two methods of colonization of which ancient European history preserves permanent record—the Greek and the Roman. They might fruitfully have taught their lesson to the colonizing nations of modern times; but rarely, if ever, have such nations looked to history for guidance. Even to-day her archives are ransacked for precedents rather than for principles.

The Greek colony was an expansion, It was a voluntary exodus. It was like the going forth of young manhood to seek fortune and fame. It did not cease to form part of a greater Greece; but still remained attached to the motherland by the most filial ties, while asserting and enjoying undiminished rights and complete autonomy. The Corcyraean ambassadors, addressing the assembly at Athens said: "Every colony, if well treated, honours the mother country; but if wronged, is estranged from it: for they are not sent out to be slaves, but to be on the same footing with those who are left at home."

The Greek colonist carried with him into new lands the glorious heritage of Greece in art and poetry and philosophy, and in the inspiring traditions of freedom as well, and

became in turn the parent of liberties when grosser conquerors held a physical sway.

Roman colonization was the imposition of her civilization upon barbarous nations by the force of mighty conquest. Less exclusive than the Greeks, who kept aloof from those not of their race and denied them the exercise of rights such as their own, the Romans gradually admitted the vanquished to the privileges of Roman citizenship, opened up great roads, encouraged trade and commerce, established law and maintained order, and promoted prosperity by actual occupancy of the conquered territory.

The colonization of New France was neither an expansion nor a conquest. The vast territory of the New World seems to have been regarded by the kings of France as a hunting-ground and trade-preserve, and as a prize to be withheld from competitors for supremacy. It was well known that if France abandoned it, England and Spain would at once seize it; France therefore determined to maintain her occupancy. But the natural flow of trade and population was not permitted to have its course. The Huguenots who might there have enjoyed a refuge, were excluded. Even the number of French Catholics desiring to go to the colony from France was restricted. "It is not his Majesty's intention" wrote one of the ministers of Marine and Colonies, "to depopulate his kingdom in order that the colony may be populated."

The kings of France, contemporaneous with the old regime in Canada from the time of Jacques Cartier, were Francis I, Henry II, Francis II, Charles IX, Henry III, Henry IV, Louis XIII, Louis XIV and Louis XV, but it was during the reign of Louis XIV, that the characteristic features of that period were

developed. The administration, as we have seen, was paternal, autocratic, and repressive to an extreme degree. The colonists had no determining voice in trade, or justice, in peace or war. The occasional manifestations of a desire to participate in public affairs, were sternly rebuked and repressed. There was nothing that the Grand Monarch so greatly abhorred as the *Vox Populi*. To him it was veritably a *Vox Diaboli*. Still, of his genuine concern for the Canadian colony, there can be no doubt. He was most lavish in his expenditure upon it. His personal labours in mastering the prolix reports of governors and intendants were great and unwearied. By gifts of men and money ; bounties to large families ; the shipment of wives to the colonists ; alternate banishments and amnesties to the *coureurs de bois* who fled from the restrictions of the settlements ; by an immense number of edicts relating to trade, finance and the general life of the habitants, he sought to build up in Canada a powerful colony,—to make France great abroad as at home. The latter days of Louis XIV, were beclouded by failures and reverses, and there were not wanting signs that his vigorous colonial policy would not be maintained. The unequalled splendour of his august reign had severely tried the resources of the state. The vanguard clouds of evil days were beginning to loom up, ominous and portentous. The *ancien regime* which had been introduced into Canada, had already existed for centuries in France : its tyranny had burned itself in the heart of a peasantry and proletariat whose mutterings were soon to be heard,—the first indications of that catastrophic culmination that was soon to horrify the world. The heritage bequeathed to Louis XV, demanded prudence and economy

at home ; energy and expenditure abroad. It demanded qualifications that Louis Bienaimé conspicuously lacked. His rule was despotic but feeble ; his court was stately but scandalous ; degraded by vice and frivolity ; unredeemed by wisdom or capacity in statecraft.* The old methods of administration were continued in Canada, but with greatly diminished energy. Louis XIV, had been lavish, but Louis XV was niggardly. The strategic schemes of La Galissonnière for defence were disregarded ; the supremacy of France in America was therefore doomed.

The policy of the two Louis' failed because it was autocratic, prohibitive, restrictive, in times of peace, and deficient in concentrated purpose and energy in the crisis of war. What the fate of Canada would have been, had English aggression been successfully resisted,—whether she would have become another Algeria, or ere now an independent state born of revolution, it is perhaps idle to speculate upon, unless it be true that absolutism is everywhere doomed to impermanence.† The long contention between France and England for colonial supremacy was decided upon the Plains of Abraham, and the old régime then passed away. Not however, without leaving traces. In the Coutume de Paris and the Ordinance of 1667, there remained vestiges of its judicial system ; the seigneurial tenure until it was abolished

* “ Beautiful Armida Palace, where the inmates live enchanted lives ; lapped in soft music of adulation ; waited on by the splendours of the world ; which nevertheless hangs wondrously as by a single hair.” Carlyle, French Revolution, I. 4.

† Sir Henry Maine, on the other hand, is of opinion that history has demonstrated the impermanence of popular government hitherto. Vide his Popular Government Chap. I.

in 1856, preserved traces of its social system; and there still remains as the unimpaired witness of the old order and of the new, the Church, whose influence was acknowledged and disclosed in almost every edict and ordinance from the time of Jacques Cartier onward.

In commenting upon the paternal and indeed autocratic nature of the administration of the old régime, and comparing it with the full measure of self government, with rights of public meeting, personal liberty and general equality before the law which resulted from British supremacy, expressions have been frequently employed by writers not a few, tending to convey the impression that France was pre-eminent among European nations in the arbitrary and despotic character of her governmental administration. But it is only with England that she suffers from comparison in these respects. In France, public opinion was far more potent and law was vastly more influential, than in Germany or Spain or Italy. Mr. Dicey has well said on this very point that "All the evils of despotism which attracted the notice of the world in a great kingdom such as France, existed under worse forms in countries where, just because the evil was so much greater, it attracted less attention."*

De Tocqueville also, in commenting upon the causes of the French revolution, shows that although a European revolution destined to abolish the remains of mediaeval institutions was inevitable, it did not break out in countries such as the principalities of Germany where those institutions were in full vitality and most oppressive, but, (and here is

*Dicey. The Laws of the Constitution, p. 180

the special pertinence of his remarks) in a country, France, where they were hardly felt at all and where peasant proprietorship and freedom of control were well established.*

The history of Canada under the Old Régime is well worth examination from any point of view, but the advantages of an examination from what may be termed a legal stand-point are undoubtedly superior. What to the lay mind is merely a wearisome reiteration of Indian wars, fur trade disputes, and ecclesiastical wranglings, relieved here and there by such moving episodes as the exploits of Champlain, of Dollard and of Wolfe, presents itself to the student of constitutions, clothed with all the attractiveness that attaches to the development of a deliberate policy as disclosed by a long series of administrative enactments. In this, as in other histories it is seen, that the various events recorded are not the mere caprices or accidents of fortune, but the inevitable results of political forces that were consciously set in motion and persistently controlled. Quebec fell not merely by reason of the genius of Wolfe and the valorous achievements of his army, but because during nearly two centuries of occupancy, France had repressed self reliance, individual enterprise and the development of a political spirit among the hardy pioneers of this country, and had inadequately devoted herself to her colonial offspring. The loss of Canada was therefore inevitable. Had Wolfe failed at Quebec, Amherst, whose capture of Montreal was inevitable, must have succeeded. A policy of central administration; endeavouring to control everything from Paris; vigorously excluding any measure

*De Tocqueville : The Old Régime.

of popular government and employing instead the artificial methods and petty devices of tyranny, was predestined to failure. The history of colonies shows that they can only be maintained either by great native energy or great extrinsic support. The colonists of New France never became their own defence. As warriors their only skill was in *la petite guerre*. Large achievements were beyond their conceptions. Restraints upon their personal freedom made it impossible for them to devise measures for the protection of the colony, while all impulses in that direction were made powerless by trade restrictions, monopolies, and administrative corruption.

But Quebec fell by reason of another co-operating cause. In the 18th century the great duel between France and England for colonial supremacy was almost continuously waged. France had preceded England in colonial enterprise. Her standards were planted in America, and in the Indies East and West long before those of her rival. She had long pursued a definite colonial policy, guided by a succession of able administrators Richelieu, Mazarin, and Colbert. She had spent enormous sums upon her colonies long before England had awakened to consciousness of her opportunity for expansion and trade. But England, the sea-girt isle, was able to keep aloof from the contentions of the continent. In the fifteenth century she withdrew from France. In the two succeeding centuries, though frequently involved in European wars, she was never directly concerned in maintaining European ascendancy. Her chief opponent in European wars was France. France however, not only fought England, but Prussia and Austria and the Netherlands as well. When the fate of

Canada was placed in issue, the energies of France were thus divided between colonial expansion and European supremacy. She proved unequal to the double strain. The counsels of the sagacious Galissonnière were disregarded, the brave Montcalm contended against difficulties insuperable, and New France fell.

If, in any survey of historic events, the student has imperfectly performed his task, unless he discern some large conclusion which they teach, he may learn from an investigation of the Old Régime that, so long as Canada was regarded as a territorial prize, to be exclusively preserved for the advantage of France alone, she became of necessity a perilous possession. Had she been permitted to develop as an expansion of a great nation, she might have become her own defender. This indeed she did become under the new order. When the only serious disruption that the British Empire has ever known took place in 1786; when France sought to avenge her loss by sending Lafayette to the help of Washington, Canada remained staunch and firm in her new allegiance; and once again during the Napoleonic wars did she resist with successful valour, invasion from the South.*

The old régime has passed away; the old order has given place to the new. The invigorating and irresistible light of a larger freedom resulting from the development of popular

* I venture to think that Mill in his work on Representative Government (p. 337) is scarcely just in remarking that, "until the present generation England has been on the same bad level with other countries as to the amount of self-government which she allowed her colonies to exercise through the representative institutions that she conceded to them." In this respect England has notably been first and alone. Elsewhere Mill more correctly notes, that the vicious theory of colonial policy which regarded colonies as exclusive trading-markets, has not been as yet completely relinquished by any other nation than England.

government, has spread throughout the ancient colony and throughout its motherlands as well. Government by the One or the Few, has, in Aristotelian phrase, given place to government by the Many, not (at least ostensibly) for the private but for the common interest. And although we cannot flatter ourselves that the political problems of an advancing civilization have all been solved; and even though we concur in the opinion that of all forms of government the democratic is the most difficult,* we may with confidence affirm that political difficulties can best be solved by the inheritors of freedom,—that freedom, oft in peril but never wholly lost, which can be traced through many memorable events, in many years of human story, even to the dim borderlands of authentic history, when the assembled democracy, with shouts and clashing spears, proclaimed its will, at once a testimony and a prophecy; that freedom which Plato and Aristotle, Cicero and Seneca, St. Thomas Aquinas and John of Salisbury, Milton and Locke, Montesquieu and Edmund Burke—these and their kindred, cherished and preserved by the power of their genius, thereby exalting literature to unfading honour; that freedom for which the Gracchi and Livius Drusus, Arnold of Brescia and Rienzi Olgiati and Lampugnani, the heroes of Morgarten and Sempach, Philip van Artevelde and William of Nassau, not less than the martyrs of our own fatherland, have shed their blood; that freedom, oft in peril but never wholly lost, which is now, it may be hoped, expanding into full and fair fruition for the healing of the human race!

*Such is the opinion of Sir. Henry Maine. *Popular Government*, Chap. ii.



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